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**EUROPEAN UNIVERSITY INSTITUTE
DEPARTMENT OF LAW**

**THE EC's ASSOCIATION POLICY
TOWARDS LATIN AMERICA**

**THE ENVISAGED POLITICAL AND ECONOMIC ASSOCIATION BETWEEN
CHILE AND THE EUROPEAN COMMUNITY**

By Sergio F. Toro Mendoza

**Dissertation submitted for the LL. M. in International, Comparative and European
Law at the European University Institute 1997-1998**

Supervisor: Professor Renaud Dehousse

Florence, 28 September 1998

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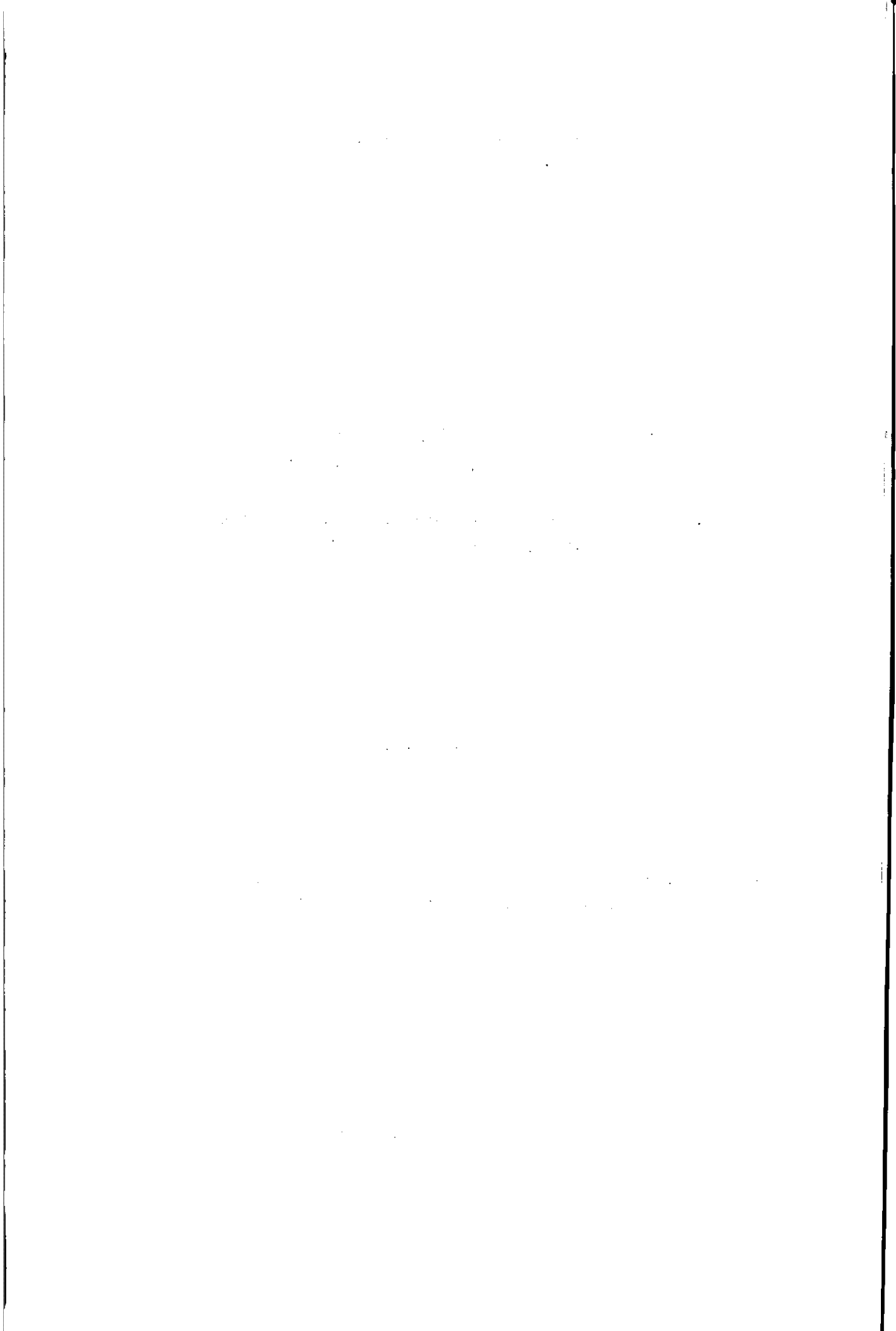


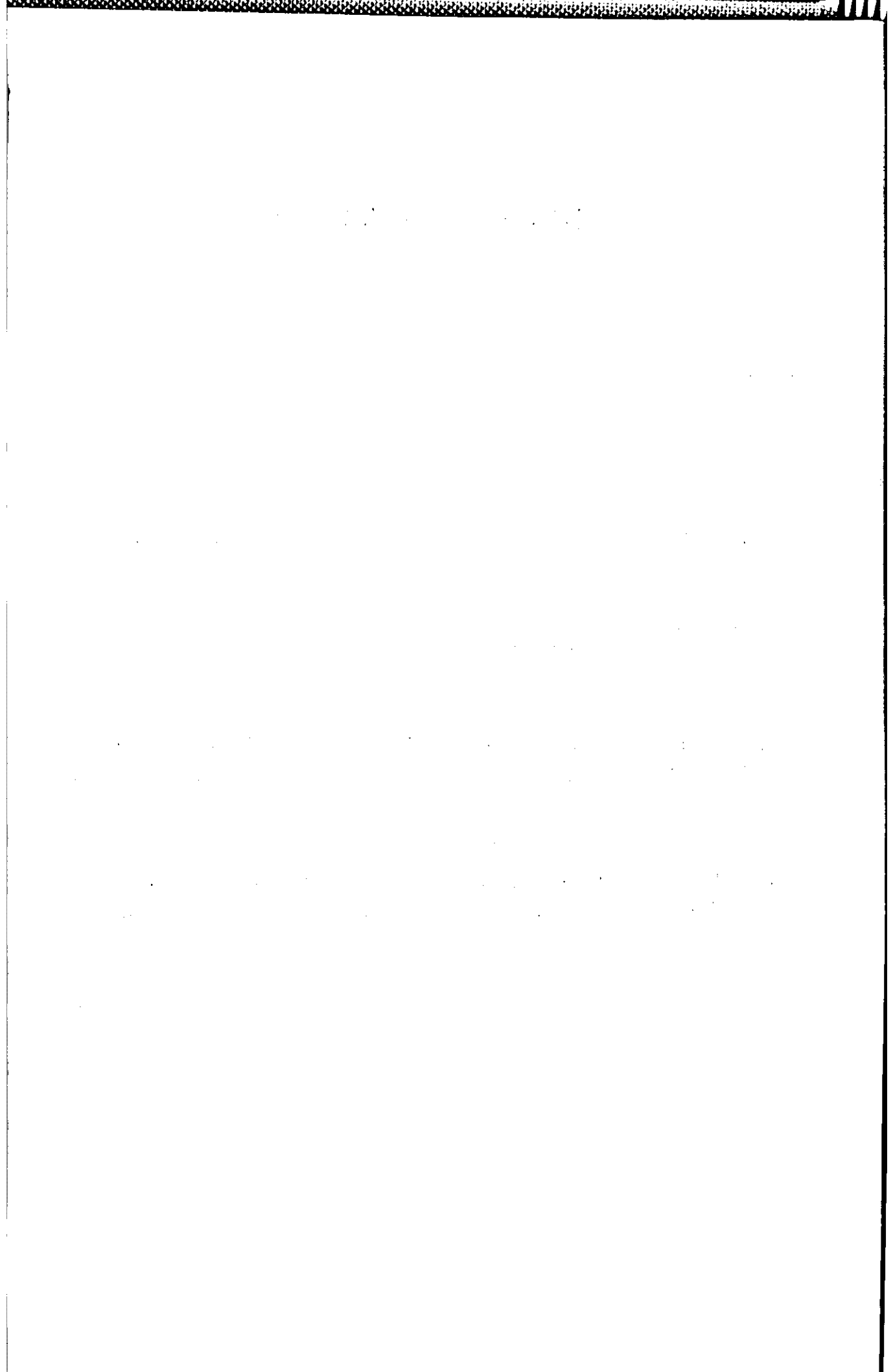
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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for a systematic approach to data collection and the importance of using reliable sources.

3. The third part of the document discusses the challenges faced in the process of data collection and analysis. It identifies common pitfalls and provides suggestions for how to overcome them.

4. The fourth part of the document discusses the importance of data security and privacy. It outlines the measures that should be taken to protect sensitive information and ensure compliance with relevant regulations.

5. The fifth part of the document discusses the importance of data quality. It outlines the steps that should be taken to ensure that the data is accurate, complete, and up-to-date.

6. The sixth part of the document discusses the importance of data sharing and collaboration. It outlines the benefits of sharing data and provides suggestions for how to do so effectively.

7. The seventh part of the document discusses the importance of data visualization. It outlines the various tools and techniques used to present data in a clear and concise manner.

8. The eighth part of the document discusses the importance of data interpretation. It outlines the steps that should be taken to analyze the data and draw meaningful conclusions.

9. The ninth part of the document discusses the importance of data reporting. It outlines the various formats and methods used to present data to stakeholders.

10. The tenth part of the document discusses the importance of data archiving. It outlines the steps that should be taken to ensure that data is preserved for future use.

ABBREVIATIONS

ACP	African, Caribbean and Pacific
APEC	Asian Pacific Economic Cooperation
CCP	Common Commercial Policy
CEEC	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
CMEA	Council for Mutual Economic Assistance
CMRL	Common Market Law Review
CRTA	Committee on Regional Trade Agreements
CSCM	Conference on Security and Cooperation in the Mediterranean
EA	European Agreement
EC	European Community
ECHR	European Convention for the protection of Human Rights
ECIP	European Community Investment Instrument
ECJ	European Court of Justice
ECLAC	Economic Commission for Latin America and the Caribbean
ECSC	European Community on Steel and Coal
EEA	European Economic Area
EEC	European Economic Community
EIB	European Investment Bank
EIPA	European Institute of Public Administration
EJIL	European Journal of International Law
EMEA	Euro-Mediterranean Economic Area
EMA	Euro-Mediterranean Agreement
EP	European Parliament
EPC	European Political Cooperation
EU	European Union
EURATOM	European Community on Nuclear Energy
FCA	Framework Cooperation Agreement
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GMP	Global Mediterranean Policy
GSP	Generalised System of Preferences

ICJ	International Court of Justice
IMF	International Monetary Fund
IRELA	Instituto para las Relaciones entre Europa y Latino América
ISI	Import-Substitution Industrialisation
JWT	Journal of World Trade
LAIA	Latin American Integration Association
MED	Mediterranean
MFA	Multi-Fibra Agreement
MFN	Most Favoured Nation
MMC	Mediterranean Member Countries
MNMC	Mediterranean Non Member Countries
NATO	North Atlantic Treaty Organisation
OECD	Organisation for the Economic and Cooperation Development
OAS	Organisation of American States
OJ	Official Journal
OSCE	Organisation for Security and Cooperation in Europe
PHARE	Poland and Hungary Aid for the Reconstruction Economy
POCO	Political Committee
SEA	Single European Act
TEU	Treaty on the European Union
UNCTAD	United Nations Conference on Trade and Development
VER	Voluntary Export Restrictions
WB	World Bank
WEU	West European Union
WTO	World Trade Organisation

INTRODUCTION

The external policy of the European Community (EC), and its trade policy in particular, has undergone a substantive reshaping since the beginning of the 1990s. This refashioning was necessary, as the EC was facing up to the deep and critical challenges stemming from the end of the Cold War. Firstly, the collapse of the communist regimes in the Central and Eastern European Countries (CEECs), along with the realities of the EC's own eastern frontiers, posed serious questions regarding the future governance of the EC's interdependencies and the sense of historical responsibility that it retained to manage those challenges. Secondly, the EC's policy towards the Mediterranean countries (Med countries) started to show some signs of movement; thus, this quest for change ended up with the EC assuming yet another priority.

The EC's political response to these changes materialised with the conclusion of the Association Agreements (AAs).¹ This association policy proved that the EC usually reacts to social shifts and potential changes with a legal framework already in mind. This response to the interdependencies involves a "complex mixture of political, economic and legal considerations".² In political terms, one of the principal effects of these agreements, concluded with countries from different regions, is that EC's boundaries enlarge.³ Boundaries are central to any study of governance and, in turn, governance is one of the most remarkable sides in the relationship between the EC and the CEECs, on one hand, and with the Med countries on the other.⁴

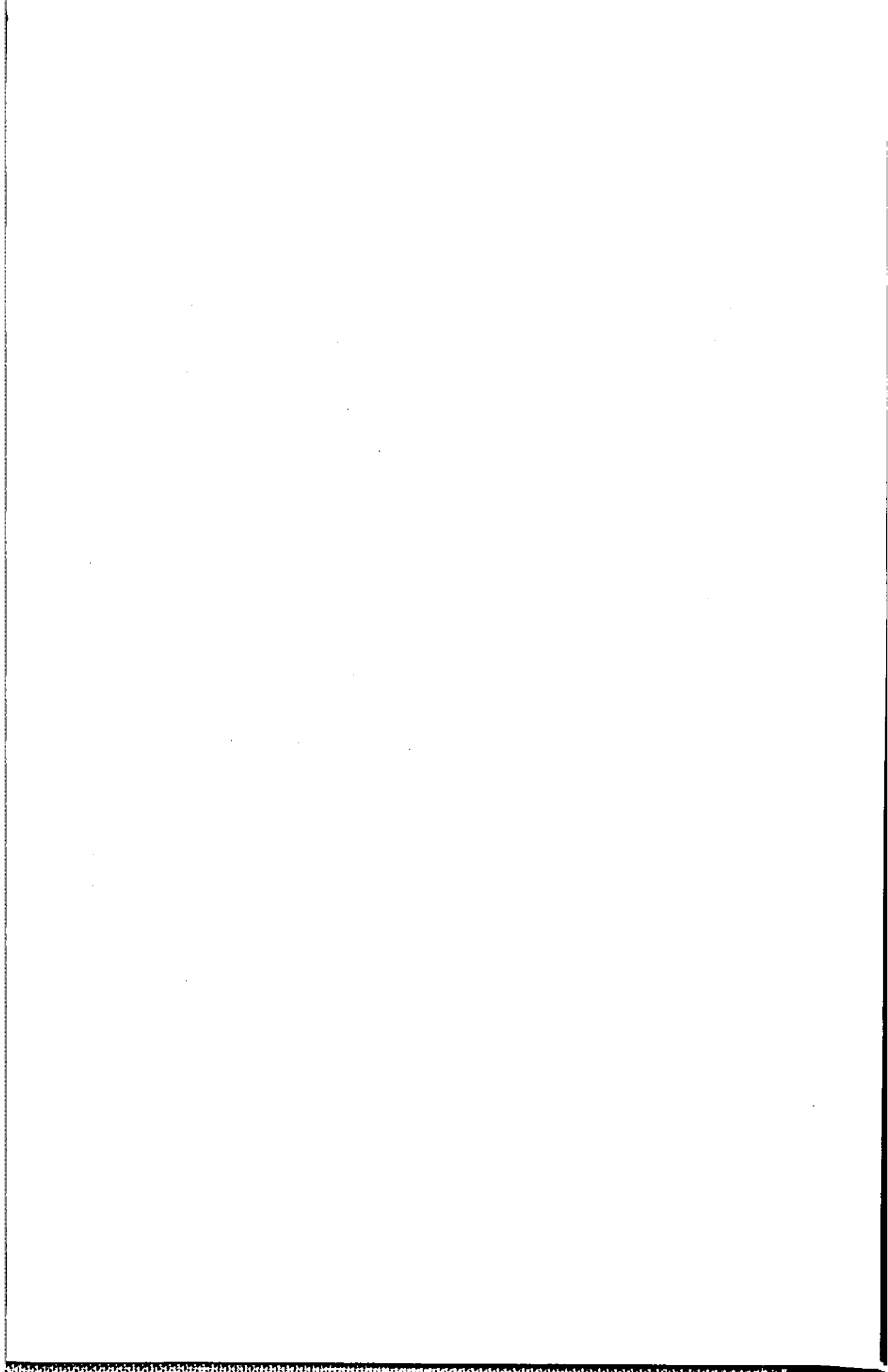
Thus, the law has served its purpose by defining and guaranteeing the integration and cooperation processes in the interaction between the EC and its counterparts. In the cases of the CEECs and the Med countries, the legal response was the conclusion of

¹ European Agreements as regards the CEECs and Euro-Mediterranean Agreements in relation to the Med countries.

² See Marc Maresceau: "The EU: Relations between the EU and Central and Eastern European Countries", Longman, England, 1997, p. 2.

³ Boundaries not only set out the limits for EU governance by defining their geographical scope, but they also determine the EU's capacity to govern.

⁴ See Lykke Friis and Anna Murphy, who argue in "EU Governance and Central Europe: Where are the Boundaries?", University of Essex, WP No. 35, 1997, p. 7, that may be four types of boundaries: namely



Association Agreements, while only Framework Cooperation Agreements (FCA) were given to the Latin American (LA) countries. This kind of EC trade policy, made effective through a legal framework which contemplates a "complex mixture of ...", constitutes the most relevant feature in itself. As has been noted by Peter-Christian Muller-Graff, law policy is, in the end, a "peace policy", one which is displayed and employed in order to "commit the conduct of the addressees to a certain path to be followed until new rules are born".⁵

All of this being said, the EC's association policy has also been envisaged in the context of the LA region. This thesis deals with future political and economic association between Chile and the EC. On 30 January 1996, the Council of Foreign Affairs (General Affairs) approved the directives to negotiate a FCA in preparation for the eventual establishment of a political and economic association between the EC and its member states, on the one hand, and the Republic of Chile, on the other. This agreement was concluded in Florence on 21 June 1996. Originally, Chile was not eligible for the EC association policy directed towards Latin America as envisaged by the Corfu European Council of June 1994. The subsequent inclusion of Chile within this policy must be assessed as a concrete sign of Chilean foreign policy success in this field.

Nevertheless, the envisaged association policy towards Chile poses many questions of a very different nature, for which this thesis has sought to provide some of the answers. Part I explores the association concept under the heading of Section 1, in which it appears that association has developed along two legal tracks: Part IV, Articles 136 *et seq.*, and Article 238, both of the EC Treaty. It is tempting to remark at the outset that only the latter has given rise to the so-called association policy. As this work is also deeply interested in inquiring into the causes, whatever their individual natures, Section 2 seeks the reasons which triggered association with the CEECs, as well as regarding the Med countries. It is clear that association is a legal response, which is intended to manage regional

geopolitical, institutional/legal, transactional, and cultural. Not surprisingly, these four boundary types are, to some extent, contemplated by EC various trade agreements.

⁵ Peter-Christian Muller-Graff: "East Central Europe and the European Union: From Europe Agreements to a Member States", in Peter-Christian Muller-Graff (ed.) *Eastern and Central European Countries and the EU: From Europe Agreements to a Member States*, ECSA-Series, Vol. 5, Baden-Baden, 1997, p. 13.

interdependencies. Once the association's legal concept and the causes that backed its utilisation have been surveyed, this work devotes itself to a description and discussion of the contents of the third generation Association Agreements concluded with the CEECs and the Med countries. All that stage, it is argued that the contents of these agreements can be divided into three categories: i) political; ii) commercial; and iii) development or aid cooperation objectives. Consequently, the Association Agreements concluded with the CEECs and the Med countries are analysed in the light of this tridimensional content; indeed, this is done in a comparative way.

Part II concentrates on the EC's association policy towards the LA region, particularly regarding Chile. This Part benefited the findings and descriptions made in Part I, to survey the causes, context, and content of the EC's policies towards the LA region. Within Part II, Section 4 argues that, despite a strong common heritage, the LA region and the countries of the European Union (EU) turned their backs on each other, especially since the end of the Second World War until relatively recently. This separation was mainly caused by the LA's political decisions to implement an inward-growth model according to the proposals which were defended by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). This removal from each other's sphere of interest was also due to the EC's indifference to deepen commercial links, an idea proposed by the European Parliament's Martino Report as early as 1964. Thus, the histories of the LA and the EU followed two parallel lines whose *status quo* was only broken due to the economic shift that took place in LA countries approximately a decade ago. The EC's association policy should also be seen as a response to this economic shift. According to this thesis' logical search, Section 5 explores the LA's post-war quest for economic growth in an attempt to discover the roots of the economic shift made by the LA countries, which explains the EU's interest to forge an association policy aimed at this region. In other words, because this LA economic shift is a direct cause of this new European policy, it deserves to be surveyed properly. This fifth Section also serves the function of portraying Chile's regional and economic specificity. Arguably, Chile cannot be compared to the economic profile of Mercosur or Mexico, because variables such as GDP or population are

not similar. Accordingly, Section 5 asks why this is the case for Chile and also attempts an answer.

Section 6 analyses the LA-EU relationship by dividing it up into four time periods. It is worth noting that this relationship was, for a long period, characterised by the EC under the 'universal principle' and limited to a development cooperation content. The association policy marks a breaking point or departure in this policy pattern when introducing a differentiation criterion among LA countries. Consequently, only Chile, Mercosur, and Mexico were given the chance to achieve commercial objectives in the future relationship with the EU by concluding an Association Agreement. Section 7 is entirely devoted to an analysis of the Framework Cooperation Agreement of June 1996. This agreement is almost identical to any of the Association Agreements that the EC has concluded with any CEEC or Med country, but it is important to highlight the fact that it is devoid of commercial objectives; these have been postponed until the association agreement has finally negotiated. In turn, Section 8 is reserved for some concluding remarks.

I should finally state, as a warning, that in writing this thesis I have tried to combined a wide range of disciplines, such as political science, economy, international relations, and law. My original interest was to provide this thesis with a multidisciplinary approach with the final goal of materialising the "law in context" concept this Department has long coined. It is possible that in the end one may realise that I was caught by fixed concepts. Actually, it has been difficult to escape from an international relation approach, mainly because my current duties, as a young member of the Chilean Foreign Office, did not allow me. Whatever the result I am very thankful to my supervisor, to the authorities of the Ministry of Foreign Affairs of Chile, and my friends Elena and Cesar.

1

1. ON THE ASSOCIATION CONCEPT

1.1 ORIGINS

The association in EC law is a legal concept related to external relations of the EC, whose development has followed two tracks: Part IV and Art. 238, both of the EC Treaty. Consequently, this section deals primarily with these two legal tracks to explore their differences and to limit the scope of this work to the latter.

1.1.1 Part IV EC Treaty

The original EC Treaty (1957) already contained provisions related to the Association concept in Part IV, entitled "Association of the Overseas Countries and Territories", Art. 131-136. This section was mainly a compromise which had been achieved by the six original members, by which some member states' demands, essentially those on keeping certain territories linked with the EC, were satisfied.⁶ Accordingly, Art. 131(1) provides that "The Member States agree to associate with the Community non-European countries and territories which have special relations with Belgium, *Denmark*, France, Italy, the Netherlands and the *United Kingdom*".⁷ As regards the purpose of this association, Art. 131(2) states that they shall "to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole". In practice, Part IV of the EC Treaty meant that the exports from associate countries could enter the EC's common market duty free. In the whole process, this became the most outstanding feature of this kind of Association.

⁶ See Eric D. Djarnson: "The Dynamics of the Euro-African Cooperation", Martinus Nijhoff, The Hague, 1976, p. 2, who states that: "At the time of negotiation for drawing up the EEC Treaty, some member states, notably Belgium, France and Italy, still maintain their influence in overseas colonial territories in Africa. With her vast colonial empire in West Africa, Equatorial Africa, Central Africa and Indian Ocean, France particularly was most concerned about evolving a special relationship between the Community and the overseas territories. The Netherlands had overseas responsibilities for New Guinea, Surinam and the Antilles, while Belgium's interests were in what was then known as Belgium Congo. The Federal Republic of Germany and Luxembourg had no such commitments".

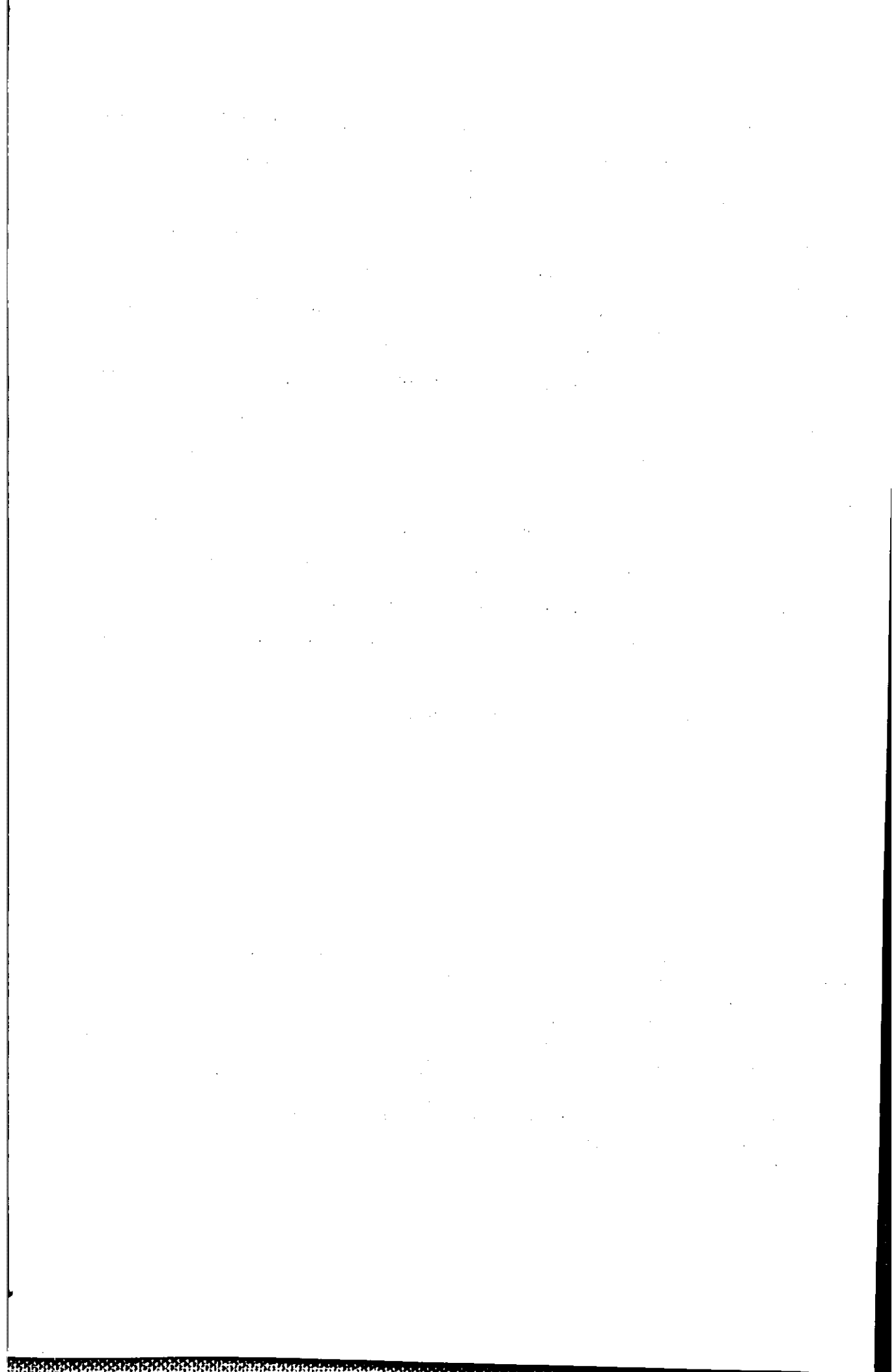
⁷ The countries emphasised were added to this Article once they joined the EC in 1973.

The original Implementing Convention, concluded to put in practice Part IV, was annexed to the EC Treaty and remained in force until 31 December 1962. Thereafter, two Conventions of Association were successfully negotiated between the same parties. The first Convention was concluded on 20 July 1963 (Yaoundé I), while a second was concluded on 1 July 1969 (Yaoundé II). Basically, Yaoundé I and II did not depart from the original Implementation Convention, concerning its aims and content. Later, however, a turning point was reached with the African, Caribbean and Pacific (ACP)-EEC Convention, commonly known as the Lomé Convention.⁸ Lomé, thus, replaced the Yaoundé II by covering the associated territories and the other ex-colonies, then gathering them all under the umbrella of the ACP states. The Lomé Convention retained most of the major concepts of the Conventions of Association, while adding new elements intended to ameliorate and to rectify what was wrong under the former relationship.

As for the name of the Convention, it should be underlined that, while the ACP states insisted on baptising the new agreement as the "Co-operation Convention", the EC "inclined to the view that 'association' was a more appropriate concept and that for the purposes of continuity the old 'association' idea should be retained".⁹ The consensus which was reached duly designated the agreement as the "ACP-EEC Convention". Otherwise it would have been known as an "Association Agreement".

⁸ Lomé I OJ L 25/1976, whose Titles are as follows: I Trade-Cooperation; II Export Earnings from Commodities; III Industrial Cooperation; IV Financial and Technical Cooperation; V Provisions relating to Establishment, Services, Payments and Capital Movements; VI Institutions; VII General and Final Provisions. Lomé Convention was renewed in 1979 (Lomé II) and 1984 (Lomé III); while Lomé IV was signed on 15 December 1989, OJ L 229/1991. This later Convention extended for ten years the benefits to the ACP countries, mainly duty free access to the EC market. In this regard Marjorie Lister comments "The EC was proud of its achievement in gathering all independent black Africa into Lomé. This goal existed for reasons of historical colonial ties and political theories of the complementarity of Europe and Africa", see *Journal of World Trade (JWT)*, Vol. 25 No. 5, 1991, p. 32. See for further details, Raymond-Marin Lemesle: "La Convention de Lomé: Principaux, Objectives et exemples d'Actions 1975-1995", CHEAM, Paris, 1995.

⁹ See Eric Djamson, *op. cit.*, p. 293.



1.1.2 Art. 238 EC Treaty

In parallel, the EC started to develop also an association policy, but based on Art. 238 EC Treaty. By using this legal basis EC concluded AAs with Greece in 1961¹⁰ and Turkey in 1963.¹¹ These agreements were envisaged as the basis for future accession.¹² Contemporary AAs, which lacked the aim of future accession, were concluded with Nigeria on 16 July 1966 (Lagos Convention, not ratified) and with the East African Community (Kenya, Tanzania and Uganda) on 26 July 1968 (Arusha Convention).¹³ The Lagos Convention, as well as the Arusha Convention, "offered the Community reverse preferences on duty-free entry of the EC exports to the East African and Nigerian markets respectively".¹⁴ Besides these agreements, AAs were also signed with Morocco¹⁵ and Algeria¹⁶ in what was the first attempt to develop an EC Mediterranean policy.

This trend of negotiating Association Agreements was also evidenced by the "Cooperation Agreements" concluded by the EU with the countries of the Med basin. These Cooperation Agreements constitute, despite the manner in which they were named, "Association Agreements". This assertion is buttressed by the legal basis chosen to conclude them, that is Art. 238 EC Treaty, and additionally due to their development cooperation content. The name chosen for these agreements is explained, in part, by saying that, in the case of the Maghreb countries, it entailed a colonialist burden arising from the Association concluded with the overseas territories and former colonial countries, based on Part IV EC Treaty.¹⁷ In other words, Art. 238 signified the status of being a former colony. It was precisely this colonialist connotation which the Maghreb countries wanted to avoid.

¹⁰ OJ 26/1993

¹¹ OJ 3687/1964.

¹² See the Preamble of the Association Agreement EC-Turkey, where it is recognised that the EC support "will facilitate the accession of Turkey to the Community at a later date". See also Art. 28 therein. According to Decision 1/95 agreed by the Association Council on 6 March 1995, the EU and Turkey decided to establish the Customs Union foreseen in Art. 22 of the Association Agreement. However, Turkey's expectations regarding EC membership were frustrated in an EU Council Decision from December 1997, through which accession was only offered to Cyprus and Malta.

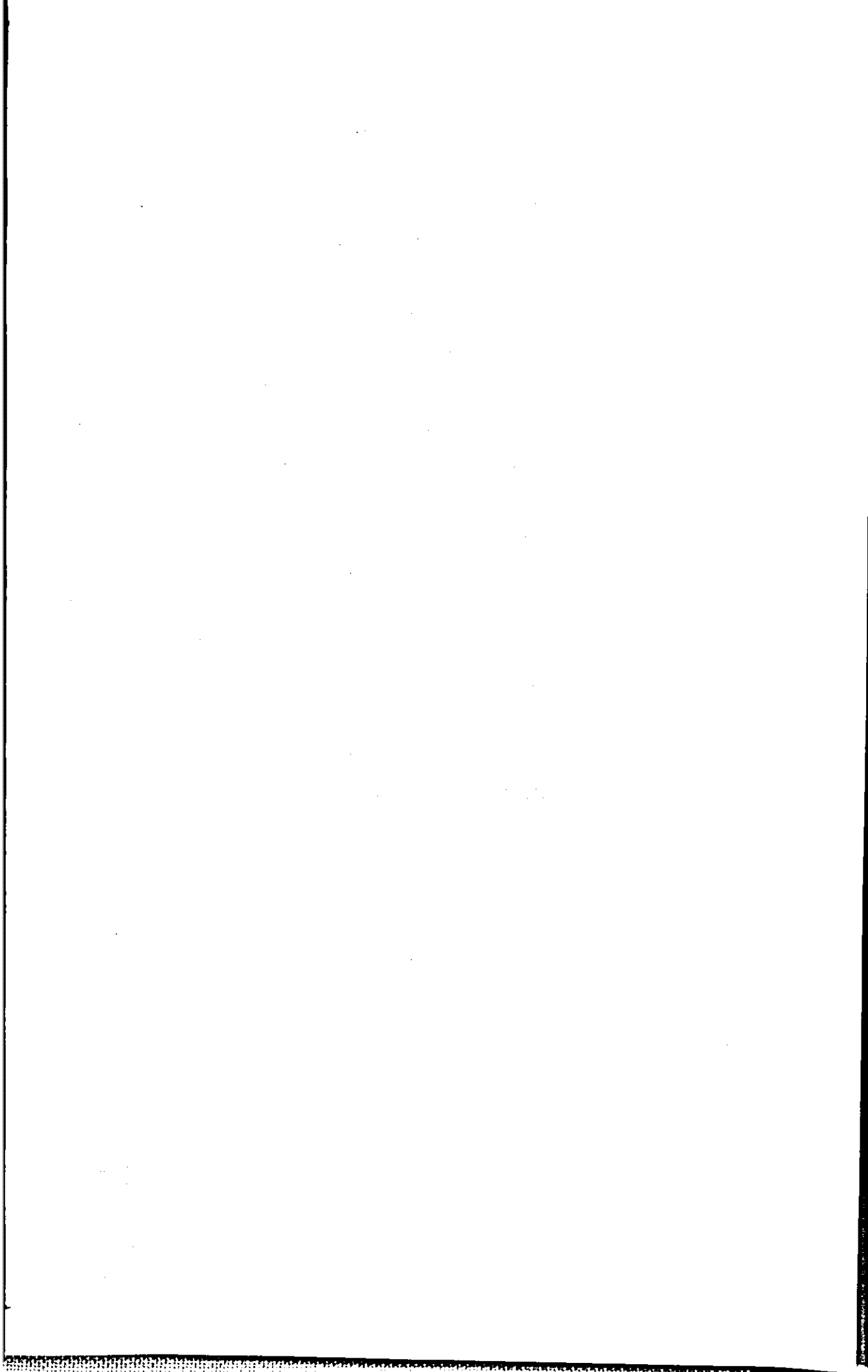
¹³ The Arusha Convention was renewed in 1971 and was due to expire on 31 January 1975.

¹⁴ Eric Djamson, *op. cit.*, p. 8.

¹⁵ OJ L 197/1969.

¹⁶ OJ L 198/1969.

¹⁷ See Francesca Martines: "The Cooperation Agreements with Maghreb Countries", EUI Monograph in Law, Florence, 1994, p. 10.



At that time, it was clear that the name given to an Agreement was not a matter of whim; certainly, it referred to an aspect that must not be disregarded.

Finally, the FTAs concluded with the European Free Trade Area (EFTA) countries at the beginning of the 1970s (Iceland,¹⁸ Norway¹⁹, Liechtenstein,²⁰ Sweden²¹ and Switzerland²²) should be assessed as a parallel policy, as their exclusive target was to create an enlarged free trade zone on a reciprocal basis. These agreements are devoid of any internal order based on Titles. Indeed, further, provisions on economic cooperation were not envisaged either.

Nevertheless, the legal concept of an Association Agreement is not defined in the EC Treaty. Instead of giving a definition, the EC Treaty provides in Art. 238 some inherent characteristics by stating that "association agreements" create: i) reciprocal rights and obligations for the contracting parties; ii) common actions; and iii) special procedures.

The implications of Art. 238 are not clearly defined and leave too much room for uncertainty. One may suggest that, for instance, it is in the core of an international agreement to create rights and obligations, and for greater generosity to be provided by one side, it is hard to think of an Association where only unilateral obligations are undertaken. As regards the concept of common action, this appears to refer to those instruments adopted by the parties and intended to implement or to develop the Association.²³ Meanwhile, the concept of special procedures then refers to the internal institutional framework provided for in an Agreement, namely the Association Council, the Committee and other institutional organisms that the parties may foresee as being necessary to administer it.

Be that as it may be, the fact is that EC legislators preferred to deal with Association Agreements in Art. 238 alone, thus separately from the other legal categories

¹⁸ OJ L 301/1972

¹⁹ OJ L 171/1973

²⁰ OJ L 300/1972

²¹ OJ L 300/1972

²² OJ L 300/1972

²³ See, for instance, the analysis presented by Nanette Neuwahl: "The EP and Association Council Decisions: the example of Decision 1/95 of the EC-Turkey Association Council", *Common Market Law Review (CMLR)* No. 33, p. 51-68, 1996. There this Decision, concerning the establishment of a customs union between the EC and Turkey, is studied in the light of the EP participation.

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that are mentioned in Art. 228; this distinction bears out the fact that AAs "are something different and something more than other agreements",²⁴ otherwise all Association Agreements would have been legislated for in Art. 228. This was the approach which was followed by the ECJ in *Demirel*²⁵ when ruling that an "Art. 238 Agreement create special privileged links a non-member country which must, at least to a certain extent, take part in the Community system".²⁶

1.2 LEGAL BASIS AND LEGAL CATEGORIES

A survey of the agreements concluded by the EC with third countries is facilitated by the fact they are usually named in the same way, respond to similar patterns, and are designed to face geographical-region demands. Additionally, and perhaps not surprisingly, these categories can also be studied on their EC legal basis. Such an approach is reasonable, because, as Maresceau and Montagui argue, the legal basis "is not simply a procedure but of substance or rather of politics".²⁷

Thus, in both cases the agreement establishing an association between the EC and Nigeria and in the Arusha Agreement, unlike the Convention of Association (Yaoundé I and II), the parties made explicit in the Preamble that the legal basis was Art. 238 EC Treaty.²⁸ This difference is explained by noting that Art. 131-136 EC Treaty were specially provided to give rise to a contractual relationship between the parties of the Implementing Convention and the Yaoundé I and II. In time, Art. 238 was applied in the AAs concluded with Greece and Turkey, and thereafter, in the 1970s, it continued being used in the

²⁴ Marc Maresceau: "On Association Partnership, Pre-accession and Accession", in Marc Maresceau (ed.) *Enlarging the EU: Relations between the EU and the Central and Eastern European Countries*, Longman, 1997, p. 8.

²⁵ Case 12/86 *Mergem Demirel v. Stadt Schwabischgmiurd*, 1987, ECR 3719.

²⁶ See, in addition, I. Macleod, I. D. Hendry and S. Hyett: "The External Relations of the European Communities", Clarendon Press, Oxford, 1996, p. 368, who state that: "The establishment of an Association involves the creation of a special or privileged relationship with the Community. This is reflected in the nature of the links established and the fact that they often span across a range of the Community's activities"

²⁷ See Marc Maresceau and Elisabeth Montagui: "The Relations between the European Union and Central and Eastern Europe: A Legal Appraisal", CMLR No. 32, 1995, p. 1342.

²⁸ The relevant part of the Preamble reads as follows: "The Parties... have decided to conclude an agreement establishing an Association between the EEC and the Republic of Nigeria, in accordance with Art. 238 of the Treaty establishing the EC"

agreements concluded with the Med countries (Cooperation Agreements). In regard to the latter, it must be underlined that they were and are AAs, even though the parties had decided to call them "Cooperation Agreements".

In considering this information, a couple of additional remarks might be suggested. Firstly, AAs based on Art. 238 were originally intended to establish a special relationship with countries from which full membership was expected (notably Greece and Turkey), but also with the less developed countries for whom membership was not envisaged (Med countries, Arusha Convention, Lomé Convention, Lagos Convention). Secondly, the fact that FTAs concluded at the beginning of the 1970s with the EFTA countries were legally based on Art. 113 EC Treaty, only bears out the idea that Association was simply considered as the furthest-reaching legal category that would be used by the EC in developing its external trade policy. This is borne out by the fact that, based on Art. 238, the EC goes far beyond the liberalisation of commercial exchanges to include aid-policies and other means of cooperation.

By focusing on the legal basis chosen for concluding these agreements, a substantial differentiation can be drawn between Art. 113-235 and 238. It is suggested here that the former formula may serve either pure free trade aims and/or some types of economic cooperation. In contrast, Art. 238, insofar as it entails an Association, is the legal basis for far-reaching agreements, including free trade and any type of development cooperation. In other words, use of Art. 238 is *ratio indicario* of the legal content of an Agreement covering a larger range of matters other than those that might be agreed upon by the Art. 113-235.²⁹ Apart from the fact, Art. 238 involves a strong political message for the third country, which says that the bilateral relations have been ranked top priority for the EU.

In reviewing the EC practice of negotiating trade agreements up the 1980s, it can be argued that an FTA may be concluded by Art. 113 alone, as it was in the case of those agreements concluded with the EFTA countries at the beginning of the 1970s. With this in mind, it should be pointed out that, insofar as this category of agreements contained

²⁹ For and opinion to the contrary, see Francesca Martines, op. cit., p. 2, when she writes that: "the different choices of legal basis are more the symbol of different types of relationships than of the different contents of the Agreement"

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provisions regarding "Economic Cooperation"³⁰ - including technical and financial cooperation -, the legal basis had to be widened to refer also to Art. 235 "because the notion of commercial policy cannot cover technical and financial cooperation... even if one adopts a broad notion of commercial policy".³¹ Such a view makes complete sense because the Court has ruled that Art. 235 "could be cited as a legal basis for a commercial policy instrument unless there was no other provision in the Treaty to confer upon the Community institutions the necessary powers to adopt it",³² and for a long time the Community was not empowered to negotiate agreements envisaging development cooperation.³³ Hence, Art. 235 was seen as the most suitable provision to fill that gap.

This approach is buttressed by making the following remarks. Firstly, all of the Agreements endowed with the expression "Economic Cooperation" in their denomination were based on Art. 113-235 formula, while those devoid of that expression were based on Art. 113, notably the FTA with the EFTA countries. Secondly, this distinction also clearly arises when the two agreements concluded with India are compared. The *EC-India Commercial Cooperation Agreement*³⁴ concluded in 1974 lacks economic cooperation provisions and was only based on Art. 113; meanwhile the *EC-India Commercial and Economic Cooperation Agreement*³⁵ concluded in 1981 was based on Art. 113-235. A similar phenomenon can be observed in the case of those agreements concluded with Pakistan, because the *Commercial Cooperation Agreement* concluded in 1976³⁶ had its legal basis on Art. 113, whereas the *Agreement for Commercial, Economic and*

³⁰ It should be underlined that economic cooperation has as its main purpose the development of industry and agriculture with a view to raising living standards or developing the economic sector of the parties. Thus, it has nothing to do with the scope provided for in Art. 113. On the concept of Common Commercial Policy (CCP), see M. Maresceau: "The Concept of Common Commercial Policy and the difficult Road to Maastricht", in M. Maresceau (ed.) *The EC's Commercial Policy after 1992: The Legal Dimension*, Martinus Nijhoff, The Netherlands, 1993, p. 17 *et seq.*

³¹ Francesca Martines, *op. cit.*, p. 13. See additionally I. Macleod, I. D. Hendry and S. Hyett, *op. cit.*, p. 339, who state that: "Where no other basis was adequate or appropriate, development or assistance policy measures were adopted on the basis of Art. 235 EEC"

³² See GSP case, Case 45/86, *Commission v. Council*, 1987, ECR 1493. In addition, see Temporary Admission of Containers case, Case 275/87, *Commission v. Council*, 1989, ECR 259.

³³ See Jean Raux: "Politique de Cooperation au Developpement et Politique Commerciale Commune", in M. Maresceau (ed.) *The EC's Commercial Policy after 1992: The Legal Dimension*, Martinus Nijhoff, The Netherlands, 1993, p. 157 *et seq.*

³⁴ OJ L 82/1974.

³⁵ OJ L 328/1981.

The following is a list of the names of the persons who have been
 appointed to the various offices of the County of [County Name],
 State of [State Name], for the term of [Term] years, to
 commence on the [Date] day of [Month], 19[Year].

The names of the persons appointed to the various offices are as follows:

Office	Name
County Clerk	[Name]
County Treasurer	[Name]
County Auditor	[Name]
County Engineer	[Name]
County Surveyor	[Name]
County Assessor	[Name]
County Sheriff	[Name]
County Jailor	[Name]
County Coroner	[Name]
County Health Officer	[Name]
County Fire Marshal	[Name]
County Police Chief	[Name]
County Jail Warden	[Name]
County Prison Warden	[Name]
County Jail Keeper	[Name]
County Prison Keeper	[Name]
County Jail Guard	[Name]
County Prison Guard	[Name]
County Jail Cook	[Name]
County Prison Cook	[Name]
County Jail Janitor	[Name]
County Prison Janitor	[Name]
County Jail Watchman	[Name]
County Prison Watchman	[Name]
County Jail Porter	[Name]
County Prison Porter	[Name]
County Jail Messenger	[Name]
County Prison Messenger	[Name]
County Jail Clerk	[Name]
County Prison Clerk	[Name]
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County Prison Porter	[Name]
County Jail Messenger	[Name]
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County Jail Surgeon	[Name]
County Prison Surgeon	[Name]
County Jail Doctor	[Name]
County Prison Doctor	[Name]
County Jail Nurse	[Name]
County Prison Nurse	[Name]
County Jail Matron	[Name]
County Prison Matron	[Name]

The names of the persons appointed to the various offices are as follows:

The names of the persons appointed to the various offices are as follows:

Development Cooperation of 1986³⁷ was agreed on the Art. 113-235 basis. Thus, it is clear that the sole aim of economic cooperation deserved a supplementary legal basis other than Art. 113. In both cases, the provisions relating to "Economic Cooperation" were the causes of the different legal basis. Thirdly, and perhaps even more conclusive, there are the statements made in the Council Regulations whereby the Agreement on *Trade and Commercial and Economic Cooperation* with Bulgaria³⁸ and the Agreement for *Commercial and Economic and Development Cooperation* with Pakistan³⁹ were adopted. Through these statements, the Council expressly recognised the legal shortfall inherent in Art. 113 when covering economic cooperation. The relevant section states: "Whereas it appears that certain measures of economic cooperation envisaged in the Agreement *exceed the powers of action* provided for in the Treaty in the field of the common commercial policy, ... recourse *should also be had to Art. 235*" (emphasis added). This statement was exceptionally explicit, especially when compared to the traditional one attached to the majority of Council Regulations by which Art. 113-235 Agreements were concluded: "*Whereas certain forms of economic cooperation provided for by the agreement exceed the powers of action specified in the sphere of the common commercial policy*".

Finally, it might be added that the case of Israel did not directly contradict the previous findings referred to here. An FTA was concluded with Israel in 1975 only on the basis of Art. 113. However, insofar as it contained provisions on economic cooperation,⁴⁰ it must be concluded on Art. 235 basis as well. The shortcoming was overcome by a Protocol relating to Financial Cooperation,⁴¹ by which Art. 18 (Technical and Economic Cooperation) was implemented, insofar as it expressly referred to Art. 238. In any case, it might reasonably be asked why Art. 238 was used and not Art. 235, as the original legal

³⁶ OJ L 168/1976.

³⁷ OJ L 108/1986.

³⁸ Council Regulation 519/90 of 24 September 1990, OJ L 291/1990.

³⁹ Council Regulation 1196/86 of 22 April 1986, OJ L 108/1986.

⁴⁰ See Art. 18 "Technical and Economic Cooperation".

⁴¹ Council Regulation 2177/78 of 26 September 1978.

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basis? The answer lay in the fact that this way Israel was definitively aligned to the EC's Mediterranean Policy.⁴²

1.3 ASSOCIATION AGREEMENT'S EVOLUTION

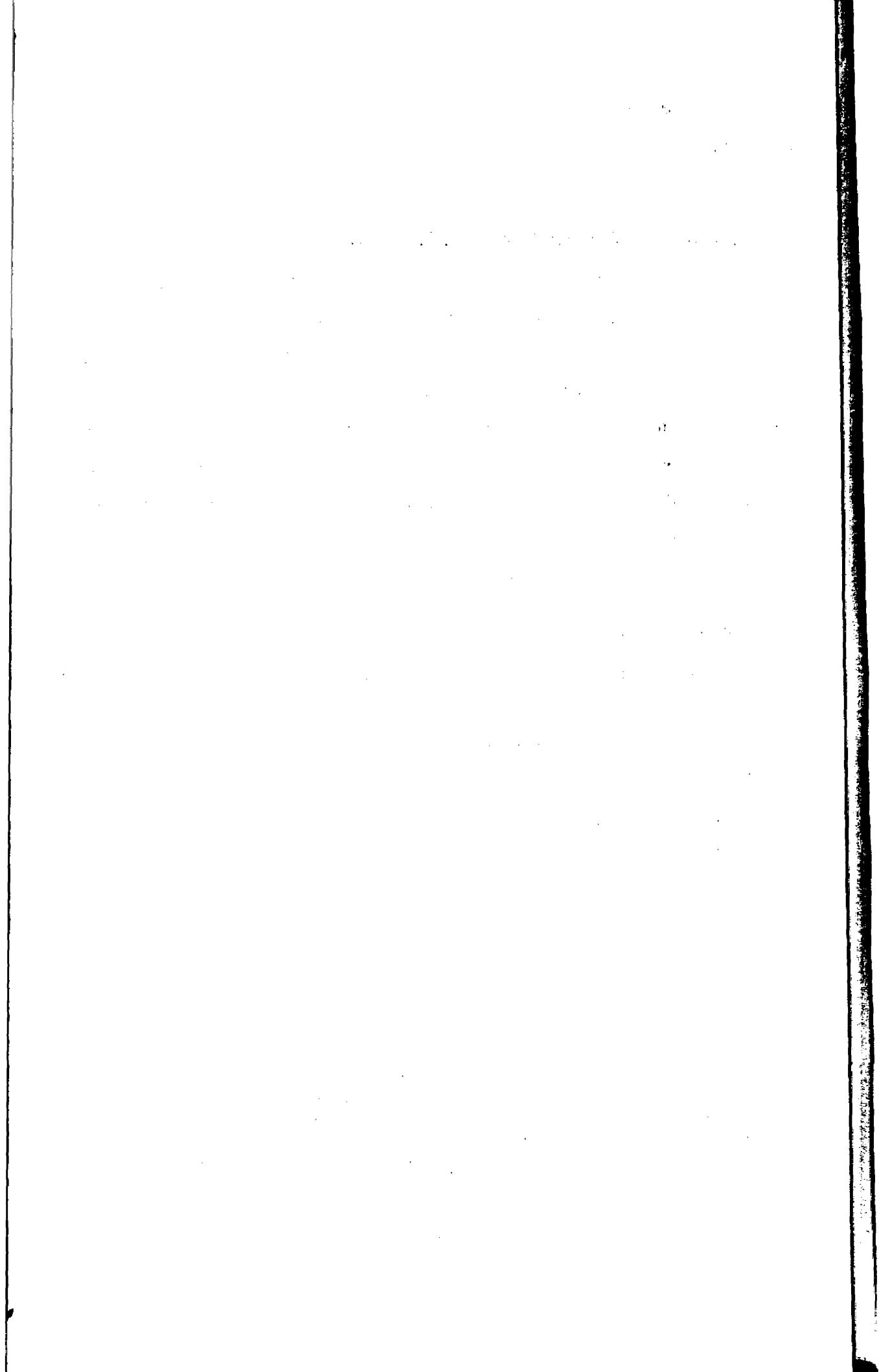
In this section it is argued that the concept of "Association Agreement" has undergone a qualitative and quantitative transformation during the 1990s. As the EC's external policy must respond to a changing world, so must the legal instruments usually used by it in developing its trade policy, that is, its AAs. Until the 1990s, the AAs had allowed the EC to manage asymmetric interdependencies, which were created through different scenarios, offering a wide range of possibilities for economic cooperation, while based on Art. 238. When a new Association policy was set in motion through the European Agreements (EA) and the Euro-Mediterranean Agreements (EMA) in the 1990s, the following association background accounted in the EC's record:

1.3.1 First Generation

- Association on a unilateral trade basis, but without the prospect of full membership (Lomé Convention).
- Association on a bilateral trade basis with a view to full membership (Turkey and Greece); and
- Association on bilateral trade basis with a view to creating a customs union (Cyprus and Malta).⁴³

⁴² The Israeli example can lead to the conclusion that Art. 238 entails an additional and symbolic message when addressed to the EC's negotiating partner, in the sense that trade alone may not be the only target sought.

⁴³ These agreements foresaw the establishment of a Customs Union in two stages, to be achieved over a ten-year period. San Marino (OJ L 359/1992) and Andorra (OJ L 374/1990) have also concluded Association Agreements leading to a Customs Union, but, regarding their legal basis, they are the anomalous cases, in as much as they were based on Art. 113-235, instead of Art. 238.



1.3.2 Second Generation

- Association Agreements with the Med countries (Cooperation Agreements) on a unilateral trade basis, markedly with aid development cooperation features in-built; and
- Association Agreements with Eastern European countries (Agreement on Trade and Commercial and Economic Cooperation) on a bilateral trade basis, while featuring traditional development cooperation.

It should be recalled that the target of free trade was achievable under the legal basis of Art. 113 alone, but when also agreed on economic cooperation, the supplementary legal basis was Art. 235. However, when the contractual relationship was intended to involve more than free trade and economic cooperation, the proper legal basis became Art. 238, even when encompassing a symbolic content if the agreements did not depart from the pattern of an FTA with economic cooperation included, such as with Israel (1975).

Focusing on the so-called second generation AA, it should be underlined that the legal techniques had already improved, in the sense that an AA had by then been provided with an equivocal content displayed in three Titles.⁴⁴ The "Cooperation Agreements" concluded with the Med countries (1976) provided a model whose patterns were repeated by themselves, and which were later resembled by the second generation AAs signed with the CEECs (1988). Only the agreements concluded with Morocco and Algeria slightly departed from established the internal order, by incorporating a Title on "Cooperation in the Field of Labour", which only bears out the ancient EC concerns on migration matters, especially from these countries.

An anomalous case is evidenced by the "Cooperation Agreement" (AA) concluded with Yugoslavia, signed in Belgrade on 2 April 1980,⁴⁵ which was legally based on Art. 113-235, despite it was endowed with almost the same internal order as the second generation

⁴⁴ In broad terms, Title I Economic [Technical and Financial] Cooperation; Title II Trade Cooperation; Title III Final Provisions [Joint Committee].

⁴⁵ OJ L 130/1980.

AA concluded with the Med countries.⁴⁶ This anomaly is explained by reference to the fact that Yugoslavia did not want to be included in the EC's policy towards the Med countries - while still maintaining its non-aligned position-, because Art. 238 would have strongly suggested otherwise.

On the other hand, the option of including the agreements negotiated with CEECs, in the 1980s, in the second generation AA category,⁴⁷ may be challenged in different fields. It could be called into question regarding the form in which they were named, their content, and by namely calling into question the legal basis on which they were concluded, that is Art. 113-235 formula. According to what has been written previously, this thesis should well sympathise somehow with such critics. Nevertheless, the conclusion, which has been reached, is that such critics can be regarded as superficial in the light of the following remarks. Firstly, their internal order - that is their Titles -, and largely their content, are similar to the AA concluded with the Med countries, as is made clear, for instance, when a comparison is made between the EC-Hungary and the EC-Egypt second generation AA.⁴⁸ In addition, and secondly, according to the EC's own view, these agreements were categorised as "second generation" Association Agreements, a fact which is clearly stated in the Commission document entitled "Association Agreements with countries of Central and Eastern Europe: A General Outline" COM (90) 398 final.

The incorrect legal basis chosen to conclude the second generation AAs with the CEECs, can be explained away by asserting that the relationship between the EC and the former Union of Soviet Socialist Republics (USSR) and its economic expression - the Council for Mutual Economic Assistance (CMEA) - was underpinned by an ideological view. The EC was seen as a capitalist organisation and, therefore, the former Soviet Union

⁴⁶ The Titles are as follows: I Economic, Technical and Financial Cooperation; II Trade; III Provisions relating to the Free Zone established by the Agreements signed at Osimo; IV Cooperation in the Field of Labour; V General and Final Provisions.

⁴⁷ For an analysis of the substance of these Agreements, see Olivier Bremont: "The Development of European Community External Relations with the Countries of Central Europe: 1988-1992 and Beyond", LL.M Dissertation, EUI, Florence, 1992, p. 12-30.

⁴⁸ **EC-Egypt** OJ L 266/1978, whose internal order is listed as follows: I Economic, technical and financial cooperation; II Trade Cooperation; III General and Final Provisions. **EC-Hungary**, OJ L 327/1988 whose internal order is listed as follows: I Commercial Cooperation; II Economic Cooperation; III Joint Committee.

attempted to avoid CMEA countries from dealing politically or economically with it.⁴⁹ Concluding agreements under Art. 238 had entailed CMEA countries becoming "associates states" of a capitalist "supra-structure", which was frankly unacceptable at that time for the former USSR. Thus, the USSR and Yugoslavia were mainly concerned on a question of symbolism than of substance.

Turning to the AA's content, it is worth underlining that second generation AA content was not assessed as being capable of facing the new challenges, especially those which had arisen in the EC's proximity by the end of the Cold War. Arguably, the policy makers preferred to continue negotiating AAs, but had also previously decided to make a detailed overhaul of this legal-political-economic instrument, with a view to endowing it with enough tools to develop a closer sense of integration with any future partner. This renewed instrument was also biased in favour of the Council and was designed so that it would clearly reflect its political will in its dealings with future partners. This meant, in the case of the CEECs, that Association was envisaged without any sign of future accession.

1.3.3 Third Generation

For third generation AAs I mean:

1. European Agreements.
2. Euro-Mediterranean Association Agreements or Euro-Mediterranean Partnership.

As to this category, it should be said that these are legally based on Art. 238 and 228(3); no reference to Art. 235 or 113 is made. In fact, there is no mention to Title XVII on Development Cooperation either,⁵⁰ which might well have been reasonably expected, inasmuch as such agreements have a remarkable and well structured section purely devoted to this matter. Art. 238 provides that the Community may conclude association agreements, while Art 228(3) requires that the European Parliament gives its consent for an Association to be legally concluded.

⁴⁹ See John Prinder: "Conditions of Enlargement to Central Europe: Social Market Economy, Pluralist and Federal Bureaucracy", in John Redmond (ed.), Harvester, London, 1994, p. 175.

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2. THIRD GENERATION ASSOCIATION AGREEMENTS: CAUSES AND GENESIS

2.1 LEGAL RESPONSE TO REGIONAL INSTABILITY.

For a better understanding of the extra-legal causes which triggered the conclusion of AAs with the CEECs and the Med countries, two ideas should primarily be borne in mind. Firstly, between 1952 and 1989 it is admitted that the EC concentrated on its own development, by making economic and political advances and by strengthening the links among the member states, and finally by forging a territorial space within which peace and prosperity reigned. The EC is synonymous with peace, a feature that may be assessed as the central historical outcome of the whole integration process. Arguably, the EC's political and economic stability were internally secured by the institutional framework itself, while externally this stability was guaranteed by the nuclear protection provided by the defence policies of the United States of America (USA) and the North Atlantic Treaty Organisation (NATO).

Secondly, in this same period, the EC's external policy was largely limited to trade and to aid in the form of economic cooperation, which was mainly addressed to former colonies of the member states. Politically, the EC was not empowered by the original Treaties to deal with the challenges of the Cold War, tasks which then had to be driven individually by the member states.⁵¹ Only the Common Commercial Policy (CCP), mainly pursuant to Art. 113 EC Treaty, was capable of allowing the EC to perform in international affairs, as a whole.

By the end of the Cold War, the EC was aware that it had become an economic world power, but up until then it had kept a low profile in political and security areas. After the Second World War, the integration process had proved to be a successful mean of pursuing certain economic aims, as well as, and above all, a way which was capable of

⁵⁰ As modified by TEU.

⁵¹ Mainly France and United Kingdom as UN Security Council permanent members.

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restoring friendly relationships between the member states. Thus, the end of the Cold War represented the historical opportunity for the EC to broaden its external policies. It also, and perhaps even more important, its conclusion entailed the appearance of political, social and economic instability within the EC's immediate proximity; thus, the end of the Cold War exerted high pressure on the EC to the extent its conclusion seemed to threaten its future prosperity.⁵²

The EC's economic and political development in latter years, contrasts with the features of the new regional scenario charged with a revival of nationalism, ethnic minority problems, civil wars, fragmentation and, even the dismemberment of formerly existing states such as Yugoslavia and Czechoslovakia. Moreover, the end of the Cold War also accounted the birth of new states (former Soviet Union states), aggressive fundamentalism, threats of mass migration from Eastern Europe and Northern Africa, acute environmental problems, the proliferation of weapons, and even isolated famine.⁵³ In sum, the EC looked to be a peaceful and economically booming territory in a world in disarray. The EC's concerns regarding regional instability were made explicit in the comments it made on the topic. As regards the CEECs, the EC showed a particular vested interest in coming to a solution encompassing closer cooperation on subjects such as immigration, asylum policy, fight against drugs, as well as judicial and police cooperation.⁵⁴

As to the Med countries, similar concerns were noted by stating that: "At present, economic and social conditions in a number of these countries are sources of instability leading to mass migration, fundamentalist extremism, terrorism, drugs and organised crime".⁵⁵ Indeed, commentators have also underlined the security objectives which are

⁵² See Mark Wise who states that: "The dramatic changes in Eastern Europe in the latter part of 1989 may well bring the relevant issues out into the open. It should be remembered that a concern with peace and stability in Europe was one of the motives behind the first steps towards today's European Community. In particular, there was the French concern to bind a German renaissance inextricable into European political-economic structures", in "War, Peace and the European Community", Nurit Kliot and Stanley Waterman (eds.) *Political Geography of Conflict and Peace*, Behaven Press, London, 1991, p. 122.

⁵³ See "The Future of North-South Relations: Towards Sustainable Economic and Social Development", the Forward Studies Unit Team, European Commission, Luxembourg, 1997, p. 28.

⁵⁴ See COM (94) 361 final, 18.11.1994.

⁵⁵ See Communication on Strengthening the Euro-Mediterranean Policy, COM (94), 427, 19.10.1994.

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being sought via AA. Hakura,⁵⁶ for instance, points out the "rise of theological conservatism among Arabs", which could cause "a political deluge of North African immigrants and possible armed conflicts. A security and political discourse is the chosen process to suppress or reverse such destabilizing influences".

In relation to the CEECs, Paul Van Den Bempt and Greet Theelen⁵⁷ argue that these countries "find themselves in an uncomfortable position from the point of view of security". Among the main elements of imbalance or uncertainty they mention regional conflicts, violent independence processes, transborder pollution, immigration pushed by poverty, etc. The uncertainties above noted not only threatened the regional political *status quo*, but also questioned the internal cohesion of the EC and its capacity to react. This view is coincident with that we can find in the Commission, which has written that the EC has striven to devise a coherent and balanced policy towards the CEECs and the Mediterranean basin, basically in order "to respond to the challenges of demography, environment, and economic and political instability".⁵⁸ The envisaged policy would then offer a legal framework covering economic, political and cooperation matters and was intended to "alleviate political, security, demographic, migratory and environment pressures".⁵⁹

Clearly the EC's emphasis in the post-Cold War period is not focused on military and security objectives. Instead of that, the meaning of economic security increased in the global context. This new perspective was at great length assessed by the EC's policy-makers. For the EC, an enormous part of its economic security lay on the successful transition of the CEECs to a market economy and to a democratic system. Certainly, and "until that transition is completed and consolidated, issues of political economy must be treated as elements of the new security order rather than as simple issues of welfare maximization".⁶⁰

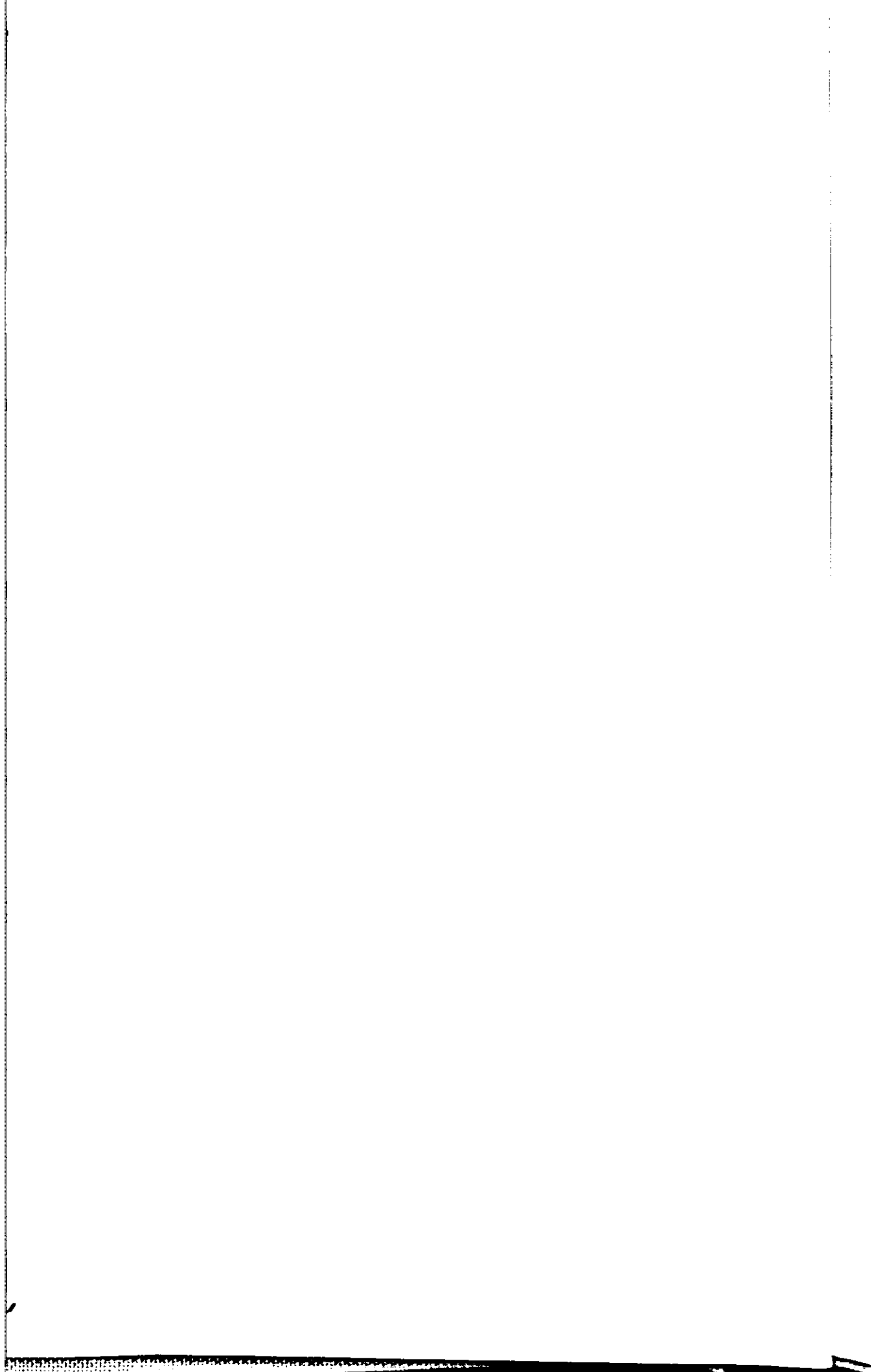
⁵⁶ See Fadi S. Hakura: "The Euro-Mediterranean Policy: The implications of the Barcelona Declaration", CMLR No. 34, 1997, 337-366, p. 343.

⁵⁷ See Paul Van Den Bempt and Greet Theelen: "From Europe Agreements to Accession", European University Press, Brussels, 1996, p. 140.

⁵⁸ "The Future of South and North Relations...", op. cit., p. 96.

⁵⁹ "The Future of South and North Relations...", op. cit., p. 97.

⁶⁰ See James Sperling and Emil Kirchner: "Economic Security and the Problem of Cooperation in Post-Cold War Europe", Review of International Studies, Vol. 2, No. 24, 1988, p. 222-230. For these authors, the concept of "economic security" has three main elements (p. 230): 1) the ability of the state to protect the social



Not surprisingly, George Joffe argues along the same lines regarding the Med-basin by stating that the "security issues of the past have been replaced by economic issues, the confrontation of the haves and have-nots on the two Mediterranean shores".⁶¹ Thus, economic, political and migration variables are argued to be interconnected in the new era, shaping a new reality to be tackled under the guise of security. The main risk posed to the EC, and one which it is attempting to avoid, is that of political-economic upheaval in the Med-basin or in the CEECs, which could lead to a massive migratory influx⁶² towards the EC, undermining its own political-economic establishment.

2.2 EUROPEAN AGREEMENTS (EAs)

The ideal shape or structure of the EC model has often been at issue among the EC's member states. The differences have often been significant from state to state, as well. In 1990, however, the whole EC model was overwhelmed by the geographical earthquake caused by the collapse of the communist governments in East and Central Europe.⁶³ Accordingly, not only was the EC architecture called into question, but also the very concept of Europe. Nevertheless, for the first time, official EC dogma, which advocated "overcoming the unnatural division of Europe", was being given the chance to be tested.⁶⁴ The EC countries faced the dilemma of having to tighten their links with the former

and economic fabric of a society; 2) the ability of the state to act as an effective gatekeeper and to maintain social integrity; and 3) the ability of the state to cooperate with others in order to foster a stable international economic environment which reinforces cooperation in the military sector.

⁶¹ Quoted by Marjorie Lister: "The EU and the South", Routledge, 1997, p. 81.

⁶² See Marjorie Lister, op. cit., p. 101: "The prospect of increased migration from the southern to the northern shore of the Mediterranean is frequently referred to by Commission officials, politicians and academics as a 'threat', a 'population bomb' or 'time bomb' ". For further details, Edward Mortimer: "Europe and the Mediterranean: The Security Dimension", in Peter Ludlow (ed.) *Europe and the Mediterranean*, Centre for European Policy Studies, UK, 1994, p. 111, who points out the following figures: North Africa's population is growing at a rate of around 2,7% annually, and it is expected to increase from 61 million people in 1989 to around 127 million by the year 2025; in contrast, the EU's population has almost stagnated.

⁶³ By briefly describing some of the remarkable events from that time, it is possible to see the magnitude of these changes. For instance, in 1989, Solidarity consolidated its political power in Poland, while in Hungary the alarm system along the Austrian border was dismantled, thus provoking a massive exodus of the East German citizens and later the collapse of East German regime. In 1991, Germany unified, while the Council for Mutual Economic Assistance dissolved itself to be quickly followed by the dissolution of the Warsaw Pact.

⁶⁴ A key problem was that the break-up of a bipolar world view had not only liberated Central and Eastern Europe, but it had also reopened the German question and with it, that of security within the EC.

communist countries, while in the latter democratic and free-market oriented economic reforms were still uncertain. Paradoxically, the success of these reforms were perceived on both sides as being largely dependent on the EC's attitude towards the CEECs. In this sense, only the promise of closer links and, perhaps even EC membership at some unstated point in the future, was capable of justifying the hardship caused by pace and depth of the reforms demanded. Hence, the debate focused on whether, and if that response were positive, when and how, the CEECs would join EC.⁶⁵

It is, therefore, worth noting how these challenges were assessed by the different EC actors. The Strasbourg Council of December 1989, in first place, acknowledged receipt of its responsibilities from an historical perspective stating that: "The Community and the member states are entirely conscious of the common responsibilities they face in this crucial moment in the *history* of Europe". This view was subsequently confirmed by in the Lisbon Council of June 1992, when it declared that: "The Community cannot now refuse the *historic* challenge to assume its continental responsibilities and contribute to the development of a political and economic order for the whole of Europe".

At the member states level, however, such assessments did not exactly coincide. For Germany and the UK, the perfect scenario would have been for the CEECs to receive membership. In relation to the former, it has been written that the "dream of Mitteleuropa is being revived, with abundant economic and political opportunities and benefits trying ahead. The shift of Germany's governmental center from Bonn to Berlin symbolizes these expectations".⁶⁶ In the latter, Margaret Thatcher, and afterwards her successor as UK Primer Minister, John Major, strongly supported the idea of offering membership to the CEECs. This enthusiasm can, in part, be explained by the UK's consistent strategy of delaying or hindering the deepening of the EC process.⁶⁷ On the other hand, France was principally concerned with the subsequent state of the balance of power within Europe, a fear triggered by the prospect of German unification. France's policy was to demand from

⁶⁵ The view that EC membership had helped Spain, Portugal, and Greece to consolidate their democratic systems was usually proffered as further evidence backing this course.

⁶⁶ See Peter van Ham: "The EC Eastern Europe and European Unity", Pinter, London, 1993, p. 193.

⁶⁷ See Karen Smith: "The Making of Foreign Policy in the EC: The case of Eastern Europe 1988-1995", Ph. D. thesis, London School of Economics, London, 1997, p. 233.

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Germany specific assurances regarding a continuous deepening of the EC integration process before being prepared to discuss any future EC policy towards the CEECs. For their part, Ireland, Portugal and Spain, and to some extent, Greece and Italy, showed some reluctance towards discussing an integration policy regarding the CEECs, in as far as it would in all likelihood entail the reallocation of some items from the EC's budget. Clearly, these countries feared that part of the structural funds might, in time, be redirected to Eastern Europe, thus jeopardising some of the projects they had in mind for those monies.

Such disparate approaches to the question of the CEECs, were further complicated by the fact that they also overlapped with the ongoing debate regarding the future design of Europe. These included the confederation approach advocated by Francois Mitterrand,⁶⁸ the theory of concentric circles made explicit by Jacques Delors,⁶⁹ and the magnetic and poliocentric circles proposed by Commissioner Andriessen.⁷⁰ The EC had been only repeating its official line on the CEECs, that support was based on the idea of these new Eastern European governments supporting and encouraging democratic and economic reforms. These lines kept aloof from what might be described as a coherent policy embracing all the aspects of Eastern Europe's new reality. The conditionality expressed at the Strasbourg Council in November 1989 seemed to be driven with the sole goal of gaining time before deciding what policy was most suitable for the CEECs; any form of integration should wait until democratic reforms were fully in place, was the basic and clear message.⁷¹

Unlike the cautious approach adopted by the member states, a phenomenon also reflected in the Council, the Commission adopted a clear position favouring an association with the CEECs. The Commission was taking both the expectations of Eastern Europe and the "Community's own interests in the political and economic future of Europe" into

⁶⁸ Financial Times, 02.01.1991, "Mitterrand calls for European Confederation".

⁶⁹ J. Delors: "The Global Challenge facing Europe", in A. Krause (ed.) *Inside the new Europe*, Harper Collins, New York, p. 312.

⁷⁰ F. Andriessen: "The Integration of Europe: It's now or never", *European Affairs*, No. 6, December 1991, p. 6-11.

⁷¹ The relevant text reads as follows: "The Community has taken and will take the decisions necessary to strengthen its cooperation with peoples desiring liberty, democracy and progress, and with states which demonstrate their commitment to the principles of democracy, pluralism, and the rule of law".

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account.⁷² It added that "early approval of the goal of association will contribute to political stability, encourage the development of new instruments for cooperation and strengthen confidence on the part of economic operations".⁷³ It cannot be denied that the Commission's view helped to create a consensus regarding what it should be done *vis-à-vis* the CEECs. Arguably, the extraordinary summit of the European Council on April 1990 reaffirmed the path for an Association policy by stating that "The Council shall immediately start the debate on association agreements. The Community shall work as fast as possible in order to complete the negotiations on association as soon as possible, on the understanding that basic conditions regarding democratic principles and economic transformation shall be fulfilled". Later on, in August 1990, the Commission worked out a detailed report on the type of Association Agreement that was envisaged, naming them "European Agreements"⁷⁴ in an attempt to outline "the importance of the political initiative they represent".⁷⁵ This document required from the prospective new associates "practical evidence of their commitment" with regard to five conditions: (i) the rule of law; (ii) human rights; (iii) multi-party system; (iv) free and fair elections; (v) a market-oriented economy. Under this proposed - or perhaps one might say imposed - scheme only Czechoslovakia, Hungary and Poland (Visegrad countries) would be able to meet the criteria.

The negotiations with the Visegrad countries were opened on 20 December 1990, on a *vis-à-vis* basis.⁷⁶ These negotiations followed an uneven course mainly due to the member states' attitude on market access and to the Visegrad's request to include the so-called "membership clause". As regards market access problems, the Visegrad focused on the reluctance of the member states to widen the commercial content of the envisaged AAs. The member states' commercial concessions were even more conservative as to confer

⁷² Communication from the Commission to the Council: "Implications of Recent Changes in CEECs for the Community's relations with the Countries concerned", SEC (90) in final, 23 January 1990, p. 5.

⁷³ "The Development of the Community's relations with the Countries of CEE", SEC (90) 196 final, 1 February 1990, p. 6.

⁷⁴ See K. Smith who has written: "The term Association Agreement apparently arose out of a dinner conversation between Delors and the Polish Prime Minister in early February; Delors said the EC wanted to put the European flag in each country", *op. cit.*, quotation No. 62, Volume No 2,

⁷⁵ Commission: "Association Agreements with the Countries of Central and Eastern Europe: A General Outline", COM (90) 398 final, 1990.

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preferences in the so-called sensitive sectors, that is, agriculture,⁷⁷ coal and steel,⁷⁸ as well as textiles and clothing products. The most significant claims of the Visegrad countries were centred on stressing that, if the commercial content proposed by the EC was to be accepted, the outcome would depart in only minor ways from the Cooperation Agreements that had previously been concluded at the end of the 1980s. As to the "membership clause", the EC refused to make any references to this matter, while the CEECs assiduously attempted to link association to future accession.⁷⁹ As the expectations of both sides did not meet with consensus, the process deadlocked after the third round of negotiations, in March 1991. At that time, the EC was unable to accede to the CEECs' commercial demands and continued with its refusal to consider including the question of future enlargement in the association texts.

The negotiations were finally jump-started once the Council revised the negotiations Directives. This new mandate offered better market access for some sensitive products, especially when the CEECs were recognised as having clear competitive advantages. Regarding the inclusion of the "membership clause", the Council only acceded to mentioning it, in so far as it represented the unilateral and particular political will of the CEECs. The Council refused to consider mentioning it as a political will shared by the EC. Indeed, the final wording reads as follows: *"Having in mind that the final objective of (Hungary) is to become a member of the Community and that this association, in the view*

⁷⁶ Agence Europe, 5396, 20 December 1990.

⁷⁷ EU negotiators repeatedly called for the maintenance of "CAP consistency" in any subsequent AA.

⁷⁸ It is interesting to quote Lykke Friis' observation on the coal negotiations: "The coal-issue not only reveals the structurally weak bargain power of the enthusiasts; it also indicates that the inside-negotiations were influenced by what we have called the balance sheet-logic: insiders do not take a problem solving approach, but prepare their own bilateral balance sheet between themselves and the outsiders", in "When Europe negotiates: From European Agreements to Eastern Enlargement", Institute for Political Science, University of Copenhagen, 1996, p. 212.

⁷⁹ Ignacio Torrealba Payá: "The European Community and Central Eastern Europe (1989-1993), Foreign Policy and Decision-Making", Centro de Estudios Avanzados en Ciencias Sociales Juan March, Madrid, Spain, 1997, p. 165, commenting upon this stage of the negotiations, says: "Central Eastern European leaders wanted, or needed, for domestic reasons, formal assurances that agreements would lead to membership".

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of the Parties, will help to achieve this objective"; this does not imply any EC endorsement of the associate states accession expectations.⁸⁰

The first European Agreements (EAs) were signed on 16 December 1991 with Hungary⁸¹ and Poland⁸². The EA concluded with the Czech and Slovak Federal Republic was not ratified due to the dissolution of that state. However, the new states, the Czech Republic and Slovakia separately concluded almost identical EAs on 4 October 1993.⁸³ The EA policy continued with Romania,⁸⁴ Bulgaria,⁸⁵ Estonia,⁸⁶ Latvia⁸⁷ and Lithuania.⁸⁸

A final step in the development of the EC-CEEC's relationship was reached through a Declaration providing the general criteria necessary for accession. This was adopted by the Copenhagen European Council in June 1993. It states that "associate countries that so desire shall become members of the Union. Accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions". In reality, these economic conditions required "the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union". As to the political conditions, the CEECs were called upon to devise "institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities".⁸⁹ Certainly, the Copenhagen Declaration on CEECs entailed a reinterpretation of the EAs from the EC's point of view. It might even be argued that this latter statement is internationally binding for the EC according to International Law rules, since it changed the nature of the EAs, originally only conceived as an alternative to accession. The Copenhagen Declaration endowed the EAs with a pre-accession content

⁸⁰ See in contrast Art. 128(1) of the EEA which establishes a provision for any European state which becomes EFTA member to have the right to apply to become a party to this agreement. See also in contrast what was provided for in the AAs concluded with Greece and Turkey, *supra* quotation 12.

⁸¹ OJ L 347/1993.

⁸² OJ L 348/1993.

⁸³ OJ L 360/1994 and OJ L 359/1994, respectively.

⁸⁴ OJ L 357/1994.

⁸⁵ OJ L 358/1994.

⁸⁶ OJ L 373/1994.

⁸⁷ OJ L 374/1994.

⁸⁸ OJ L 375/1994.

⁸⁹ The Essen European Council of December 1994 added a condition requiring "good neighbourly relations".

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regarding future membership,⁹⁰ something that the CEECs were not capable to achieve two years ago.

2.3 EURO-MEDITERRANEAN AGREEMENTS (EMAs)

As might be expected from the EC, the policy it devised for the Med countries can also be surveyed by distinguishing certain groups of countries within the Mediterranean basin. Indeed, two kinds of distinction can be drawn. The broadest one stresses the fact of EC membership, and therefore it distinguishes between the Mediterranean member countries (MMC) - that is Spain, Italy, Greece, France and Portugal, and the Mediterranean non-member countries (MNMC). This distinction is relevant in so far as the MMC have played a decisive role in the EC decision-making process in relation to the Med-basin. The second classification highlights the geographical location of the MNMC. Hence it distinguishes between the Maghreb states, which groups the Western Med-countries, that is Tunisia, Morocco and Algeria, and the Mashreq states, which are composed of Egypt, the Lebanon, Israel, Jordan, Turkey, Cyprus, Malta, Syria, and the Palestinian Authority, that is, all of the Eastern Med-countries.

The EC's policy towards the Med-basin has its roots in the 1960s, when Association Agreements were concluded with some of these countries. By 1970, preferential schemes including Malta, Spain and Israel had been agreed, and they were followed two years later by Cyprus, Lebanon, Egypt, and Portugal. By the end of 1972, the Commission was proposing to devise a coherent external policy to handle the new interdependencies stemming from the Med-basin. This policy was termed the Global Mediterranean Policy (GMP), and it was intended to supplant the largely trade-oriented case-by-case approach, which featured the EC's random policy. In the light of the GMP, new Association Agreements were concluded with some of the Maghreb and the Mashrek countries.

⁹⁰ The following CEECs have applied to EU membership: Hungary (31.03.94), Poland (05.04.94), Romania (22.06.95), Slovakia (27.06.95), Latvia (27.10.95), Estonia (28.10.95), Lithuania (08.12.95), Bulgaria (16.12.95), Czech Republic (23.01.96) and Slovenia (11.06.96). The Commission by its Communication

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Generally speaking, these agreements basically granted unilateral trade concessions to the MNMC and envisaged several forms of economic cooperation.⁹¹ However, they especially sought to encourage EC participation in the industrialisation of its new partners, the modernisation of their agricultural sectors, and in their export promotion campaigns. In political terms, the agreements concluded through the GMP's implementation additionally represented the successful French policy of multilateralising its own external objectives in the Med-basin.⁹²

Nevertheless, the GMP had blatant flaws; with a decade, it was admitted that the Cooperation Agreements had not provoked the expected economic impact that had originally been envisaged, by not promoting a higher level of industrialisation and by not encouraging businessmen from either side to increase bilateral trade. Moreover, the preferences that had been conceded were undermined by those granted to the Lomé Convention countries in 1975 and, in turn, by those granted to Spain, Portugal and Greece upon accession to the EC, as well as through the creation of the Generalised System of Preferences (GSP). In addition, the appearance of a new political-economic entity, in the scale of the EC's priorities, arguably the CEECs, "brought about a new, if somewhat uneasy, sense of identity on the part of the Mediterranean member states, determined to ensure a better balance in the EU's relationship to the east and to the south".⁹³

The birth of a new Med policy, announced by the EC in 1989, signalling the advent of a true partnership, was the natural reaction to what had clearly become an old and frustrating diplomatic style. The 1989 Med policy was a sign that the EU was demonstrating some awareness of the fact that twenty-five years of EU preferences had only led the Med countries to become heavily dependent on the EU, without preparing them for the shocks of a global trade liberalisation trend made effective in the 1990s. This

"Agenda 2000" of 15 July 1997, only recommended to open negotiations with Hungary, Poland, Estonia, Czech Republic and Slovenia.

⁹¹ Marjorie Lister holds the view that: "The introduction of the Generalized System of Preferences (GSP) in 1971, the general reduction of tariffs under the GATT rounds, and the prospect of preferences to be accorded to Commonwealth countries after the accession of the UK seemed also to jeopardize the value of these agreements", *op. cit.*, p. 84.

⁹² Arguably, especially with regard to its economic links and linguistic past, the Med-basin was traditionally a French domain.

situation was likely to jeopardise the stability of the Southern Mediterranean flank in the medium term. However, it took a long time for this new policy to crystallise. It was only following the mandate which emanated from the Corfú European Council in June 1994, that the Commission issued a Communication⁹⁴ to the Council and to the Parliament on relations between the EU and the Southern and Eastern Mediterranean. In proposing a far-reaching programme, the Commission intended to institute a: i) progressive establishment of a European-Mediterranean Economic Area (EMEA); ii) the structure for wide-ranging political, economic and issues-based dialogue; and iii) a provision for EC based financial and technical initiatives. After a series of visits by the Troika for discussions with the Med-partners, the Cannes European Council of June 1995 reached agreement on the EU's position regarding an Euro-Mediterranean Conference and on the financial cooperation necessary to implement the type of partnership it envisaged.

Barcelona Process

The Barcelona Conference, which took place between 27-28 November 1995, was attended by the Foreign Ministers of the fifteen EU member states, the Commission's Vice-President Manuel Marín, and the President of the European Parliament. This meeting marked a new starting point in the relations between the EC and its Mediterranean neighbours. This Conference gave rise to a Declaration through which the implementation phase of this new policy was finally put into force. Drawing comparisons with those agreements concluded in the 1970s, this new partnership policy was basically envisaged as covering three fields:⁹⁵

- i) a new spirit in the bilateral relations based on a non-paternalist approach.
- ii) a wider range of issues never mentioned before: political, economic and financial, social development, human and cultures aspects.
- 3) the utilisation of two complementary tracks: bilateral and regional.

⁹³ G. Edwards and E. Philippart: "The Euro-Med Partnership: Fragmentation and Reconstruction", *European Foreign Affairs Review*, No. 2, 1997, p. 467.

⁹⁴ See Communication on Strengthening the Euro-Med Policy, COM (94) 427, 19 October 1994.

⁹⁵ See Jean-Pierre Derisbourg: "The Euro-Med Partnership since Barcelona", in *Mediterranean Politics*, Vol. 2, No. 1, 1997, p. 10.

For its part, the Barcelona Declaration entailed a work programme, which may be divided into three broad chapters:

A. Political and Security Partnership: Establishing a common area for peace and stability

The concept of peace and stability has been at the core of every established Mediterranean policy. In the Barcelona Declaration, the parties stated their conviction that "peace, stability and security of the Med region are a common asset which they pledge to promote and strengthen by all the means at their disposal". In actual fact, security concerns had been major issues for the Spanish and Italian governments, both of whom had proposed in 1990 to hold a Conference on Security and Cooperation in the Med basin (CSCM), one idea which was not then endorsed by the French government.⁹⁶ Nevertheless, in the Lisbon European Council of June 1992, Italy and Spain managed to get the Med basin onto the agenda of the Common Foreign and Security Policy (CFSP) as an area for possible joint action. The persistence of these countries paid off as agreement was reached at the Essen European Council of December 1994 to organise the Barcelona Conference. At that time, the hostility emanating from the Med countries towards the EC, *inter alia*, due to its participation in the war actions against Iraq, the intensification of the civil war in Algeria and, particularly, the increasing trend of immigration to Europe -in the process changing the historic role of Spain and Italy from "senders" to "receivers"- were solid arguments in favour of forging a convergent action on the security significance of the Med basin.

As a result of Barcelona Declaration, the signatory parties committed, *inter alia*, to respect the United Nations Charter and the Universal Declaration on Human Rights, to develop the rule of law and democracy, to respect and to ensure respect for diversity by peaceful means, to combat terrorism, and to fight against organised crime and drugs problems. In particular, the parties agreed to study what confidence and security-building measures would be most appropriate "including the long-term possibility of establishing a Euro-Med pact to that end".⁹⁷

⁹⁶ France felt that such an initiative might undermine its exclusive position in the Maghreb, see Edward and Philippart, op. cit., p. 470.

⁹⁷ In other words, a Conference on Security and Cooperation in the Mediterranean (CSCM), something similar to the Organisation for Security and Cooperation in Europe (OSCE). This laudable proposal has not yet got off the ground, though. The lack of political support includes the fact that one of the founders of the idea, former

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At this point, the need arises to draw a distinction between "soft-security" and "hard-security" issues. The former term covers those phenomena, which are assessed as being capable of provoking social disturbances, but at a low degree of intensity; these include drug trafficking, organised crime, and terrorism. In turn, the latter term of hard security refers to a military conflict hypothesis. Unlike soft-security issues, which may be managed by bilateral agreements aimed at creating a scenario capable of tackling such problems by targeting them beforehand, hard-security issues deserve to be dealt within a hierarchical and sophisticated military structure capable of solving the problem by destroying it. Such a distinction is important to point out because the main EC security concern in the Med basin relates to soft-security issues, and largely that means immigration.⁹⁸ Therefore, it does not make sense to confront this problem by invoking any of NATO's mechanisms, since the consensus is to consider such defence organisation as not being suitable to deal with the security objectives in the region.⁹⁹ Instead of using NATO, the establishment of a structure akin to the Organisation for Security and Cooperation in Europe (OSCE) seems to be the proper forum to deal with Mediterranean security issues at the current stage.¹⁰⁰

2. The Establishment of a Euro-Med Free Trade Area

Italian Foreign Minister Gianni De Michelis, subsequently went on trial in regard to another matter. See Victor-Ives Ghebale: "Towards a CSCE in the Mediterranean: The CSCM", in Michael R. Lucas (ed.) *The CSCE in the 1990s: Constructing European Security and Cooperation*, Institute for Peace Research and Security, University of Hamburg, Baden-Baden, Germany, 1993, p. 335.

⁹⁸ See Edwards and Philippart, op. cit., p. 472. See in an opinion to the contrary, Bernabé López García and Jesús Nuñez Villaverde: "Europe and the Maghreb: Towards a Common Space", in *Europe and the Mediterranean*, op. cit., p. 140 *et seq.*, where the "Myth of Invasion" is discussed. In addition, see Philip J. Muus and Elisabeth W. Van Dam: "Comparative Research on International Migration and International Migration Policy-Migration from the Maghreb and Turkey to the EU, and from Mexico, Guatemala and El Salvador to the US", University of Amsterdam, June 1996, published by the European Commission, 1998. Also see Anita Bocker and Tetty Havinga: "Asylum Migration to the EU: Patterns of Origin and Destination", Institute for the Sociology of Law, Nijmegen, June 1997, published by the European Commission, 1998.

⁹⁹ This consensus is not shared by Italy, however, principally due to its experience as the object of fundamentalist attacks and because of its dependence upon Algerian energy supplies.

¹⁰⁰ See Dominic Fenech: "The Relevance of European Security Structures to the Mediterranean (and Vice-versa)", in *Mediterranean Politics*, Vol. 2 No. 1, 1997, p. 149 *et seq.*, where the defense organisations NATO and WEU, and the OSCE fora are commented as regards its perspectives in the Med-region. See in addition, Arnaud Jacomet: "Regional and State Security Challenges in the Mediterranean: The WEU's Response", University of Reading, WP No. 57, 1994.

The second goal of the Barcelona Declaration is the establishment of an "Economic and Financial Partnership: Creating an area of shared prosperity". Such an area would be achieved through three stages: i) establishing a free trade area; ii) by implementing an economic cooperation and concerted action programme; and iii) by substantially increasing the EU's financial assistance.

The free trade area will be established through new Euro-Med Agreements and free trade agreements between the partners of the EU, with a view to achieving it by the year 2010. This free-trade area might well encompass a total population of 700 million inhabitants, resulting in one of the largest free trade areas in the world. As was envisaged in the Declaration, the Euro-Med Agreements are meant to cover the majority of trade in goods and in services, while they shall also respect the obligations resulting from the WTO. Besides such considerations, the Agreements are also to be coupled with provisions covering various economic subjects, which can be listed as follows: i) the protection of intellectual property rights; ii) competition law; iii) customs cooperation; iv) standards and quality control; and v) an approximation of legislation to improve conditions for the establishment and provision of services.

As regards the EU's financial assistance, the Cannes European Council agreed to set aside ECU 4,685 million for this programme,¹⁰¹ in the form of available Community budget funds for the period 1995-1999. Such assistance will in the time be supplemented by European Investment Bank (EIB) support in the form of loans, as well as by bilateral financial contributions from the member states.

3. Partnership in Social, Cultural and Human Affairs

The last section of the Barcelona Declaration was reserved in order to recognise the importance of "the traditions and civilization throughout the Mediterranean region, (and that the) dialogue between these cultures and exchanges at human, scientific and technological level are an essential factor in bringing their people closer, promoting

¹⁰¹ It is worth noting that Spain and France sought a package of ECU 5,500 million, which compared more favourably with the ECU 7,700 million granted to the CEECs. This proposal was challenged by the northern EU countries, however; hence the compromise figure above mentioned.

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understanding between them and incorporating their perception of each other". In taking this statement into account, the parties listed fourteen objectives aimed at developing this third aspect of their new partnership. Among these objectives, not surprisingly, five of them are given over soft-security related issues; this is made very clear, for instance, from the importance that was attached to the "role played by immigration in their relationship" and, indeed, in the necessity for a "joint fight against drug trafficking, international crime and corruption".

In assessing the Barcelona process, it is tempting to remark that, although the EC was guided by the MMC, states more culturally involved in the Med-region, the aftermath of the Conference demonstrated what might be termed as a European vision. However, the emphasis on soft-security issues, for instance, as the Euro-Arab dialogue of the 1970s, may only end up derailing wider goals. Besides, it has also been written that, in economics terms, the Conference "was no more than a fool's bargain, because it did not provide for free access into Europe for agricultural exports or for the industrial development of the area".¹⁰²

Nevertheless, some further advances were made in the second Euro-Mediterranean Conference, which was held in Valetta (Malta) on 15-16 April 1997. This Conference, attended by 27 Foreign Ministers, served as a forum to review activities which were developed under the principles settled in Barcelona and also to work out a future strategy, but their final assessment was rather cop-side.

Finally, it should also be mentioned that, under this Euro-Mediterranean Partnership policy, Euro-Mediterranean Agreements (EMAs) have been concluded with Tunisia, the Palestinian Liberation Organisation (PLO),¹⁰³ Israel, Morocco,¹⁰⁴ and Jordan¹⁰⁵, while negotiations have also been started with the Lebanon,¹⁰⁶ Egypt¹⁰⁷, Syria¹⁰⁸ and Algeria¹⁰⁹.

¹⁰² Marjorie Lister, *op. cit.*, p. 89.

¹⁰³ OJ L 187/1997.

¹⁰⁴ COM (95) 740 final.

¹⁰⁵ COM (97) 554 final.

¹⁰⁶ Council approved negotiating directives on 2 October 1995.

¹⁰⁷ Negotiations were opened on 23 January 1995.

¹⁰⁸ The Council authorised the Commission to negotiate on December 1997.

¹⁰⁹ The Council authorised the Commission to negotiate on 10 June 1997.

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3. CONTENT OF THE THIRD GENERATION ASSOCIATION AGREEMENT

As has been previously argued, third generation AAs are endowed with specific characteristics. The content of these agreements has only been reached by the policy makers after much deliberation with the goal of managing the new set of interdependencies resulting from the EC's East and South proximity, once the Cold War era had ended. This section explores, in a comparative way, the third generation of AAs intended for the CEECs and the Med countries from the point of view of their provisions.

From the outset, it should be underlined that these AAs respond to similar patterns as regards their content and internal order. At the same time, it is argued that it is also possible to distinguish them in three areas, that is, through their political, commercial and development cooperation objectives. In methodological terms, this research inquires into the manner in which these different objectives (political, commercial and development cooperation) are provided for through these third generation AAs. In order to give a global overview, a comparative approach has been utilised, as has been already stated. This survey has mainly concentrated on the EAs concluded with Hungary and Poland as its legal samples; so, unless otherwise stated the provisions mentioned concern these two EAs. As for the Med countries, the Tunisia EMA has served as the comparative analysis for research purposes.

3.1 POLITICAL OBJECTIVES

The political objectives of the AAs are twofold. Firstly, the EU is also interested in negotiating the so-called "democratic clause", by which the respect to democratic principles and human rights is risen to the category of essential element of the agreement.¹¹⁰ Secondly, the parties agree to develop a political dialogue that might take place at several governmental authorities levels, included a parliamentary level.

¹¹⁰ In this section mainly a description of the EAs and EMAs political content is made. For a deeper discussion, see *infra* section 7.3.1.1 and 7.3.1.2.

3.1.1 European Agreements

Political objectives are present in each the Preambles, in so far as it refers to the "firm commitment" of the Community, its member states, and the associate states to the process of the Conference on Security and Cooperation in Europe, and in particular, the Helsinki Final Act, the concluding documents of the Madrid and Vienna follow-up meetings, and the Chapter of Paris for a new Europe. Taking these references into account, the contracting parties expressed their desire to establish a political dialogue on bilateral and international issues of "mutual interest".

Art. 1, by which "An Association is hereby established", also provides for political aims by stating that one of the parties is "to provide an appropriate framework for the political dialogue allowing the development of close political relations". Nevertheless, the political objectives are to be achieved through regular political dialogue, which is provided for in Title I.¹¹¹ This political dialogue, when feasible, takes place at several levels. The highest level is based on consultations between the Presidents of the European Council and the Commission, on one side, and the Head of the State or Government of the associated state, on the other; secondly, at Ministerial level the dialogue takes place within the Association Council. The parties may also set up any other procedures or mechanisms for political dialogue, which becomes a third level. In particular, through meetings at senior official level and through the diplomatic channel. A fourth level is represented by any other means able to make a useful contribution; and finally, the political dialogue would also take place at parliamentary level.¹¹²

3.1.2 Euro-Mediterranean Agreements

Political objectives are also present in the Preamble to the EMAs. There the parties referred to the importance of the principles of the UN Charter, particularly the observance of human rights and democratic principles. Notably, unlike the EAs, the parties agreed the democratic clause in Art. 2 as "an essential element of the agreement". It must be said that the democratic clause emphasises a remarkable difference between the EAs and the EMAs.

¹¹¹ Art. 2-5.

¹¹² Art. 5.

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As for the political dialogue, it is provided for in Title I. It is worth noting that, while in the EAs context the dialogue contributes "to the establishment of lasting links of solidarity and new forms of cooperation", in the EMAs it is stated that it "will contribute to the prosperity, stability and security of the Mediterranean region". Thus, the wording in the latter agreements evidently has a security dimension, a belief which is borne out by Art. 4 which refers to "issues of common interest to the parties, examining in particular the conditions required to ensure *peace, security and regional development*". As to the level which would be used for developing this political dialogue, surprisingly neither the highest level nor the parliamentary level were envisaged. Thus, it can only be operated at Ministerial level and, of course, through any other procedure, mechanism or means to be set up by the signatories.

3.2 COMMERCIAL OBJECTIVES

Free trade has been the paramount aim of every kind of all previous AAs. However, in developing a bilateral trade preferential policy, the EC has been criticised sometimes in the GATT/WTO fora for not fulfilling their requirements under Art. XXIV. This particular provision sets down an exemption to the Most-Favoured Nation (MFN) principle. As is generally known, the GATT system is in fact based on MFN (Art. I) and National Treatment (Art. III) principles. Pursuant to the former, any concession made by one country to another must immediately and unconditionally be extended to like products originating from other Contracting Parties. Nevertheless, among the exception that can be found to the MFN principle,¹¹³ Art. XXIV is by far the most important. This provision recognises that FTAs may lead to "increasing freedom of trade" through "closer integration between economies".¹¹⁴ For a free trade area to take advantage of the exception to the non-discrimination rules as settled by GATT in Art. XXIV, paragraph 8(b) requires:

¹¹³ See M. Trebilcock and R. Howse: "The Regulation of International Trade", Routledge, 1995, p. 77, where eight exceptions are listed.

¹¹⁴ Art. XXIV GATT/WTO mentions i) a Customs Union; ii) a Free Trade Area; and iii) and an Interim Agreement "leading to the formation of either a customs union or free trade area". Each of these is defined and subject to certain conditions that have to be fulfilled, in order to be accepted as exceptions by the GATT/WTO Contracting Parties.

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- i) the elimination of duties and restrictions on "substantially all the trade" between the constituent territories; and
- ii) that duties and other regulations of commerce, maintained in each of the member countries and applicable upon the formation of the free trade area to the trade of the GATT Contracting Parties not included in such an area, shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same member countries prior to the formation of the free trade area.

Interpretation of Art. XXIV has been troublesome and several Working Parties have been formed to report on it. As reported by Schoneveld in 1992,¹¹⁵ to ascertain the limits of the expression "substantially all the trade" has been a complex task. It is worth underlining that the conclusion reached by Schoneveld, has been borne out thus far by Leon Brittan, several years after. Accordingly, Brittan¹¹⁶ has stated that "questions about the definition of 'substantially all the trade', as well as the definition of major sectors, and the related question of coverage in terms of non-traded goods all remain as significant sources of uncertainty". Moreover, there is a backlog of notified, but unexamined, agreements with GATT and GATS provisions; an attempt was made to tackle this problem through the establishment in 1996 of the Committee on Regional Trade Agreements (CRTA).¹¹⁷

These considerations may also serve as an introduction to other related matters explored here. This debate, on Art. XXIV GATT/WTO, concerns the EU, because the latter has concluded a large number of preferential agreements with third countries.¹¹⁸ In taking

¹¹⁵ See Frank Schoneveld, who states that: "not only it is difficult to arrive at a proposition that could be deemed 'substantially...' but it has so far been impossible for GATT parties to agree on even the qualitative aspects of interpreting this term", JWT Vol. 26, No. 5, 1992, p. 64.

¹¹⁶ See Leon Brittan: "WTO aspects of EU Preferential Trade Agreements with Third Countries", known as Brittan Memorandum. Text can be found in European Foreign Affairs Review, No. 2, 1997, p. 277.

¹¹⁷ It is worth noting that when dealing with the liberalisation of goods (GATT), the test that GATT uses is negative rather than positive. This is because the Contracting Parties may make recommendations when they consider that an agreement is not likely to lead to the creation of more trade than heretofore existed. Unlike goods, the test undertaken in regard to the liberalisation of services is negative, since what needs to be ascertained is whether the agreement is consistent or not with GATS rules. Furthermore, there is no prohibition, as in GATT, on maintaining an agreement if recommendations are not fulfilled.

¹¹⁸ See Heinz Preusse: "Regional Integration in the Nineties: Stimulation or threat to the Multilateral Trading System?", JWT Vol. 28 No. 4, p. 147.

the EC trade policy into account, it must be noted that it has been argued that the EC takes a narrow view of its WTO obligations when entering into free trade agreements.¹¹⁹

In the light of the AAs, two outstanding remarks must be emphasised. First of all, AAs are undoubtedly aimed at covering "substantially all the trade". Accordingly, they thus refer to liberalisation in trade and in services.¹²⁰ However, they also cover other elements of trade policy, such as harmonisation, financial and capital flows, development cooperation and competition policy issues, etc. Secondly, all AAs are somewhat limited in their commercial content by the EU's restrictive concession regarding so-called sensitive products, which are largely made up of agricultural, clothing and textile products. Problems arise, of course, when the exports of a third country are mostly represented by these self-same "sensitive products". In this case, the requirements of "substantially all the trade" can hardly be accomplished. The EC's response to this can be found in the Brittan Memorandum, which reads: "It is important to put this in context. GATT Art. XXIV has never envisaged that a free trade area or customs union require entirely free trade in all products between the parties members". Another problem emerges from the fact that the EC has applied an asymmetrical focus, in some preferential agreements, by virtue of which the third country avails first, sometimes a greater degree than the EC, from the tariff dismantling process. It can be argued that such an approach to free trade offsets the restrictions imposed on sensitive products when these are a substantial part of the third country's exports.¹²¹ However, this would not mean that the provision on "substantially all the trade" would thus be covered, still leaving this issue as a problem.

In this section, the commercial content of AAs is explored from the point of view of trade liberalisation, as envisaged in goods and in services, because, as has been proven by the last GATT multilateral negotiations round, international trade is essentially the sum of transactions in goods and in services. The provisions on safeguards are also of interest, as they usually tend to restrain free trade and hamper the attainment of commercial goals. Of

¹¹⁹ See Schoneveld, *op. cit.*, p. 65.

¹²⁰ See Brittan Memorandum "The debate is focused on traditional questions of trade in goods and regional liberalisation covering trade in goods. From the EU's perspective it is important not to overlook the GATS dimension of regional integration", *op. cit.*, p. 280.

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course, the AAs deal with other important matters upon which free trade principles are also underpinned, such as competition, capital movements, payments and the harmonisation of laws. For reasons of space this dissertation avoids dealing with all them.

3.2.1 Trade in Goods

I would like to introduce this section by quoting the doctrine established in the *Cassis de Dijon* case.¹²² According to this doctrine, the free movements of goods (Art. 30 EC Treaty) can only be achieved by removing measures which restrict trade, not only customs duties and quantitative restrictions, but all measures having equivalent effect, i.e. protectionist, irrespective of whether or not they are specifically aimed at domestic or at imported products. Where technical standards are not harmonised, free trade and the movement of goods must be ensured by applying the principle of mutual recognition of national rules and by accepting the rule that national specifications should be no more stringent than is required in order to achieve their objectives.¹²³ Bearing this doctrine in mind, it is tempting to say that it is not always easy to find this doctrine reflected in the content of AAs.

3.2.1.1 European Agreements

Free trade is to be accomplished within a maximum period of ten years from the entry into force of the Agreement, which is then to be phased out in two periods of five years each; these reductions must also be in accordance with WTO rules. The question of liberalisation refers to trade in goods and trade in services. As regards the former, it is provided for by Title III on Free Movement of Goods. There it distinguishes between Industrial Products (Chapter I), Agricultural Products (Chapter II), Fisheries (Chapter III), and Common Provisions (Chapter IV). Meanwhile services is provided for by Title IV,

¹²¹ Indeed, such asymmetry could in fact be considered necessary in accomplishing the "reciprocity" required by Art. 238 EC Treaty.

¹²² Case 120/78, 1979, ECR 649. See also *Dassonville* case, Case 8/74, 1974, ECR 837.

¹²³ See *Polydor* case, Case 270/80, 1982, ECR 329. There ECJ ruled that the concept of the common market requires the merger of national markets into a single market. The scope of Art.30 EC Treaty must be determined in the light of Community objectives and activities as defined in Art. 2 and 3 EC Treaty. In addition, see *Joined cases 51 to 54/71, International Fruit*, ECR 1107.

which concentrates on Movement of Workers, Establishment, and the Supply of Services, all of these aspects being dealt with separately in three different Chapters.

a) Industrial Products: Taking the EC-Poland EA as an example, one can conclude that the criteria applied to industrial products are clearly inspired by the concept of asymmetric trade. This means that Community products have benefited from liberalisation at a later stage than polish industrial products, mainly in order to offset, somehow, the backwardness and lack of competitiveness of the CEECs. Nevertheless, it should be noted here that the so-called "inverse asymmetry" effect has been taking place since 1995. This means that Poland has been obliged to speed up its pace of trade liberalisation, even in its most sensitive areas, thus allowing EC products to vie competitively with polish goods in the Poland's market place.

As regards the specific text of this EA, it should be highlighted that it contains provisions for the abolition of customs duties on imports, as well as any other charges having equivalent effect (Art. 9). The same holds true for the quantitative restrictions, and any other measures having equivalent effect, in a way which reflects the aforementioned asymmetric criteria (Art. 10). Thus, according to the timetable envisaged by this agreement, customs duties will be abolished on the basis of this asymmetric approach. Account should also be taken of the fact that 55% of the polish industrial goods exported to the EC was agreed to enter duty-free, when the agreement came into force. Since then, the agreement provided that duties on each product must be subject to successive reductions but, if any tariff reductions are subsequently agreed as a result of WTO negotiation rounds, these reduced tariff will then become the basic duties for the purposes of the EA as well.¹²⁴

In turn, Poland dismantled its tariffs on about 27% of its total imports from the EC. Products which were favoured by these cuts included those with relatively high customs duties, such as leather (30%), footwear (20%) and toys (20%). Meanwhile, a second group of goods began to be phased out from 1 January 1995, with reductions set at a rate of 20% a year (sensitive for Poland).

¹²⁴ It should be noted, at this point, that tariff cuts did not cover textile products (Protocol 1) or ECSC products (Protocol 2).

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However, the abolition of customs duties does not necessarily imply that the trade flows had increased in Poland's favour. Indeed, this did not occur because EC industries were still protected by various non-tariff measures, ranging from technical regulations and standards to voluntary export restraints (VERS), the control of unfair practices to anti-dumping rules, etc. These measures represent a second line of commercial defence, which hardly exist in any of the CEECs. It should also be remembered that the EC retained such measures on what are called sensitive goods, products that account for 51% of Polish exports¹²⁵ to the Community.

b) Agricultural Products: A general conclusion which can be reached on agricultural goods is that, despite the EAs allowing for some concessions in the form of levy reductions and quotas increments, the CEECs have not been able to take full advantage of them. The point is that CEECs agricultural products are not as competitive in the sectors favoured by the dismantled tariff as the EC products.¹²⁶ The result may be explained by noting that the EC traditionally adopts protectionist approaches in its agricultural trade with third countries, a process which is mainly dictated by the internal commitments derived from the Common Agricultural Policy (CAP) rules.¹²⁷

Having analysed the EC-Polish trade relationship, it appears that agricultural products constituted around 20% of total Polish exports to the EC at the time the Agreement was concluded. An amount that could have then favoured the free trade envisaged in the EA. Therefore, the EC's protectionist defence, which include a complicated system of minimum entry prices, customs duties, levies, tariff ceilings and

¹²⁵ See Krystyna Gowlikowska-Hueckel and Andrzej Stepniak: "The Polish Association Agreement: Overview of Trade Liberalization", in Andrew Evans and Per Falk (eds.) *Transformation and Integration: The New Association Agreements*, Centre for European Community Law and International Trade Law Business School, University of Umea, Sweden, 1992, p. 163.

¹²⁶ See Judit Kiss: "The Agricultural Trade of the Central and Eastern European Countries", Institute for World Economics, Hungarian Academy of Sciences, WP No. 50, April 1995, p. 9, who states that: "The EU concessions, for instance, would have allowed imports of 13,800 t of beef from the Visegrad group in 1993-4, but only 5,600 t actually arrived by the end of May 1994".

¹²⁷ In the Brittan Memorandum it states that: "Sectoral exclusion is not a feature of any recent agreement, but total liberalisation of agriculture has never been possible because of the need, which has explicitly recognised in some negotiating mandates and implicit in them all, to avoid conflict with the Common Agriculture Policy", op. cit., p. 287.

quotas, finally undermined this goal. In the end, this EA only foresaw a partial liberalisation of agricultural trade, limiting its scope to six groups of commodities. The most significant reduction was agreed for meal and potato products, the levies of which were reduced by 50% when the EA came into force. Fruit and vegetables, notwithstanding the agreement to abolish customs duties, must respect the minimum entry price set up according to CAP rules.¹²⁸ In return, Poland agreed to dismantle customs duties for some 1,500 products, which is tantamount to 27% of its agricultural imports from the EC. Most of these products are not produced in Poland, however; it includes citrus fruits, live swine, horses, sheep, goats, and poultry.

In assessing the outcome of negotiations in agricultural products, it should be highlighted that, throughout the intervening internal, both sides have experienced problems in handling their agricultural sectors. On the one hand, the EU has acknowledged that the present system of agricultural supports cannot be maintained, since EU budgetary pressures and WTO commitments in agriculture make reform of the CAP unavoidable. On the other hand, among the CEECs, only Hungary has the profile of net agricultural exporter, while the remaining CEECs are currently net agricultural importers. Nevertheless even Hungary's agricultural exports have begun to shrink in size. A key point that must be borne in mind relates to agriculture as a percentage of GDP. Andras Inotai has pointed out that the part played by agriculture in the generation of the GDP, in Hungary, "has fallen dramatically from some 15-20% to less than 10%, which is no higher than in the less developed EU countries".¹²⁹ Regarding Poland, agriculture contributed 6.6% of its total GDP in 1995, downed from 12.9% only six years earlier. In this case, it should be said that agriculture represents 27% of the total employment, hence any crisis in this sector impact in the global economy.¹³⁰

¹²⁸ Krystyna Gowlikowska-Hueckel and Andrzej Stepniak have concluded that: "The Community only opens its market for products in the production of which Poland is not competitive", *op. cit.*, p. 164.

¹²⁹ See Andras Inotai: "From Association Agreement to Full Membership?", Institute for World Economics, Hungarian Academy of Sciences, WP No. 52, April 1995, p. 12.

¹³⁰ For further details, see Michael Tracy (ed.), "East-West European Agriculture Trade: The Impact of Association Agreements", Agriculture Policy Studies, Prague, 1994.

c) **Safeguards:** Chapter IV of the EAs provides for safeguard measures in the form of new or increased customs duties, which can be implemented by the signatories. Art. 28 EC-Poland EA provides for such safeguards for Poland. The sectors in which these measures may be taken are newly emerging industries, those undergoing restructuring or those facing serious difficulties, particularly when they then produce significant social problems. In order to assess properly this exception, it should be noted that the total value of imports covered by such measures cannot exceed 15% of total industrial imports, further customs duties should not be higher than 25% *ad valorem*, and the protective period can only last up to five years. The restructuring clause in Art. 28 is intended to reflect the Community's awareness of Poland's poor economic record and also provides a satisfactory way of dealing with the high social cost involved in the reform process. In addition, this Chapter provides for several safeguards which have already been foreseen in GATT, and which, of course, are available to both contracting parties. In turn, Art. 29 permits the adoption of anti-dumping measures, an area in which the EC has benefited the most, because of its long-standing experience gained during more than thirty years of applying anti-dumping measures.¹³¹ Next, Art. 30 provides a general safeguard clause which is concerned with the effects that serious injury or threats or disturbances caused by imports might have on domestic production in any sector of the economy; meanwhile, Art. 31, which is essentially a clause dealing with re-export and serious shortages, allows both signatories the right to impose safeguards measures in case major difficulties are caused to the exporting party by its excessive exports.

The safeguards, which are adopted, must be of a temporary and non-discriminatory nature. It is also important to note that measures may be taken in the case of difficulties regarding the balance of payments, a safeguard provided by Art. 64(2). Both parties may adopt measures to solve this problem, including those regarding imports; however, such measures must not apply to capital transfers related to investments.

¹³¹ See Jolanta Taraszkiewicz and Anna Zielinska-Glebocka: "Free movements of Goods", who declare: "It is worth mentioning that Polish exports to the Community have been severely affected by their application [anti-dumping measures] for many years", in *Transformation and Integration: The New Association Agreements*, op. cit., p. 18.

Finally, it is tempting to say that both Poland and the EU have made use of these safeguards already. Poland, for instance, has applied the restructuring clause and the balance of payment difficulties provisions; meanwhile the EU has mainly restricted itself to the application of anti-dumping rules.¹³²

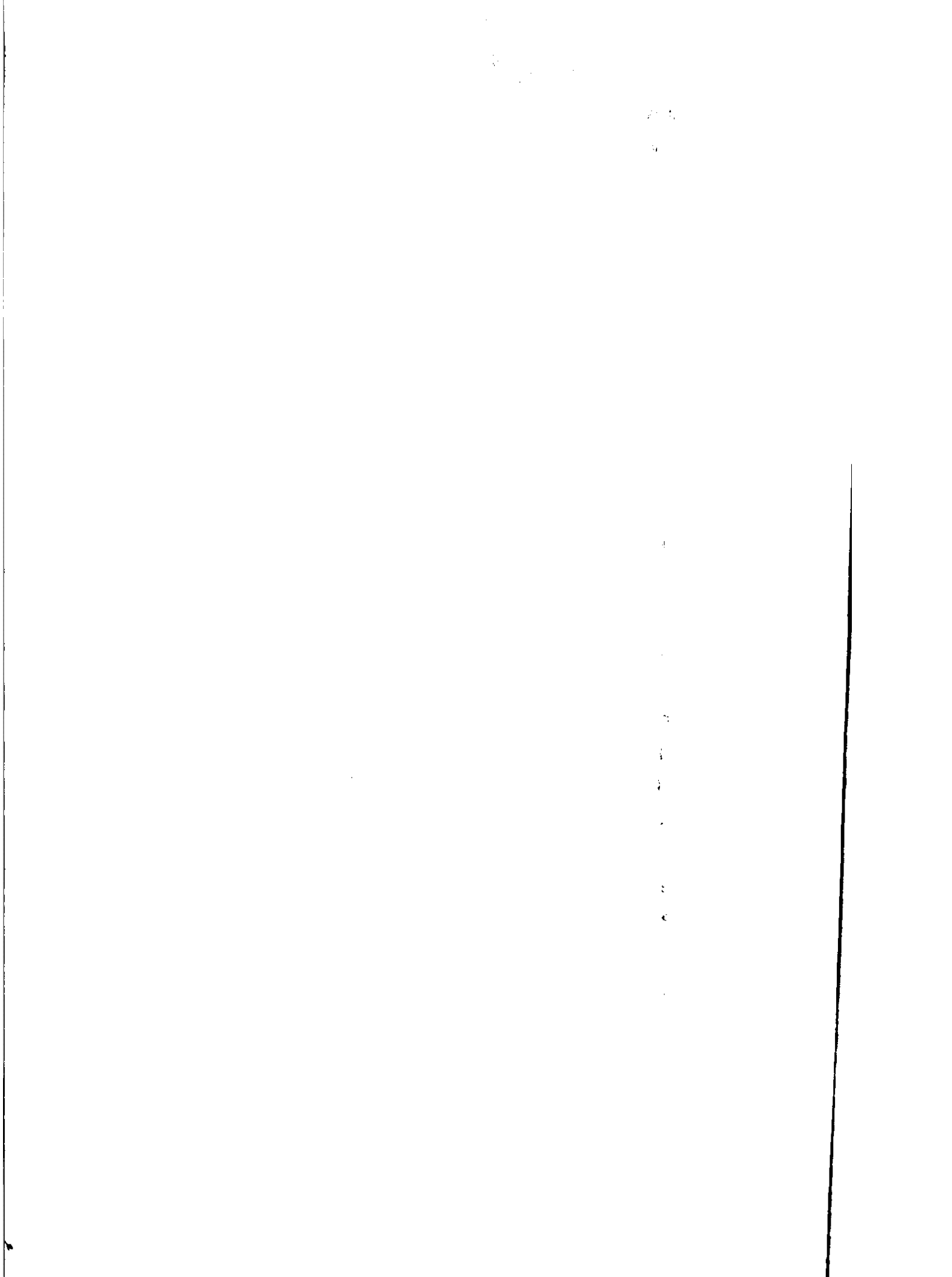
3.2.1.2 Euro-Mediterranean Agreements

Traditionally, the EU has always included trade preferences and financial assistance in its Mediterranean policy. The essential target of these measures was the promotion of Med-exports to the EU through preferential tariff concessions, which were supported by development cooperation programmes. Nonetheless, in regard to the trade concessions, it should be noted that sensitive products were traditionally subject to restrictions, thus undermining somewhat the general impact of the EC policy. A quick appraisal of the Cooperation Agreements of 1976 reveals that Tunisia has benefited the most, while negligible gains have been made by Algeria. As of 1980, the trade impact has also become negative as regards Morocco's agricultural products, while remaining positive, once again, in relation to Tunisia. The fact that, historically the benefits of the EC's Med policy have not been spread out more evenly between all Med countries seems unfortunate and does not appear to have been taken into account at all in the subsequent agreements.¹³³

As to the EMAs themselves, the commercial objectives which are envisaged, are to be achieved by gradually forging a free trade area, in accordance with the WTO's rules, during a period lasting no longer than twelve years. These commercial objectives mainly refer to the liberalisation of exchanges between the contracting parties, distinguishing trade in goods and trade in services. The former subject is dealt with in Title II Free Movement of Goods, where a distinction is made between Industrial Products (Chapter I), Agricultural and Fisheries Products (Chapter II), and Common Provisions (Chapter III). The latter subject is provided for in Title III, which is entitled Right of Establishment and Services.

¹³² See Andrzej Stepniak and Anna Zielinska: "Status and tendencies in Poland and East Central Europe and the EU: From Europe Agreements to a Member Status", in *Eastern and Central European Countries and the EU: From Europe Agreements to a member states*, Peter-Christian Muller-Graff (ed.), ECSA-Series, Vol. 5, Baden-Baden, 1997, p. 120.

¹³³ See Richard Pomfret: "Mediterranean Policy of the European Community: A Study of Discrimination in Trade", Trade Policy Research Centre, 1986, Macmillan, London, p. 101.



The Tunisian EMA serves as a practical example in which to illustrate the extent to which free trade is envisaged.

a) Industrial Products: The EMA provides that no new duties on imports, or charges having equivalent effect, can be introduced between the parties (Art. 8), while at the same time conceding duty-free entrance for Tunisian products into the EC market, as well as free of all non-tariff barriers (Art. 9). With regard to European exports, this EMA states that all customs duties have to be dismantled within a twelve-year period, starting with cuts affecting 12% of all EC exports. Over five years, a further 28% of customs duties on EC exports must be dismantled, while a further 30% of goods must be allowed to enter free of charge at the rate of one twelfth a year, until nearly all of the duties have been lifted by 2008. Finally, the remaining products will then have to be dismantled, following a period of grace of four years, at the rate of one eighth per year.

The pattern described above is also being followed in the other EMAs, in the sense that EC unilateral concessions will no longer exist in the future, thus giving rise to real bilateral trade. This finding cannot be disregarded, because this scenario implies the loss of a preferential position within EC market for Med countries. The commitments accepted through the EMAs entail that Med countries will grant concessions in industrial goods, where their products already enjoyed free access to the EC, with the exception of sensitive products. This might only produce acute levels of competitive stock and, indeed, it implies a loss of tariff revenues and the feasibility of rising imports from the EC. The gains, for at least some Med countries, are expected to come from the liberalisation process affecting food products,¹³⁴ despite the narrow concessions that have made by the EU.

On the other hand, it has often be said that the EC's restrictive policy on clothes and textiles has seriously undermined the industrialisation prospects that were originally envisaged, even since the Cooperation Agreement of 1976. In the case of the Maghreb countries, it is worth mentioning that they started from a privileged position in 1969, when

¹³⁴ See Lionel Fontagné and Nicolas Périody: "The EU and the Maghreb", OCDE, 1997, p. 16, who have asserted that: "An estimated 60 per cent of industrial firms in Morocco and Tunisia could not survive against

they did not only enjoy preferential treatment in industrial goods, but they also did so in sensitive products. However, they have had to progressively shared it with other Med countries thanks to the GMP of the 1970s. These preferences were further undermined in 1978 and ever since because of the implementation of new textile schemes, mainly through VERs.¹³⁵ The restrictions imposed were intended to overcome the EC shortfall which had been registered in this sector; between 1973 and 1976, external trade turned from being US\$1,000 million surplus into a deficit of similar size.¹³⁶ However, there have also been surveys which contradict this traditional view. These surveys demonstrate that VERs played a relatively minor role in enforcing effective restrictions,¹³⁷ except in relation to specific product categories and in the cases of certain pre-determined countries, for example with Moroccan trouser and shirt exports.

The current situation, in the aftermath of the Uruguay Round of negotiations, indicates that, the elimination of VERs, as a consequence of the MFA's dismantlement,¹³⁸ is likely to hamper the competitiveness of Med countries. This loss of competitiveness arises because even more competitive developing countries -such of those of Asia- are better equipped to gain most from these new rules. Then, of course, there are the indirect benefits of trade liberalisation, such as improved allocative efficiency; however, these are unlikely to compensate for the erosion of trade preferences in the short term.

b) Agricultural products: Pursuant to Art. 16 the parties have undertaken to implement gradually a greater degree of liberalisation in agricultural and fishery exchanges. The agreement contains a special clause (Art. 18) under which the signatories undertook to

freely imported, competing European products unless appropriate technological and marketing improvements are made by 2010".

¹³⁵ It should be taken into account that the first of the Multi-Fibra Agreements (MFA) was concluded in 1973 with a view to restraining textile exports via bilateral agreements to be concluded between import and export countries.

¹³⁶ See Richard Pomfret, *op. cit.*, p. 88.

¹³⁷ See Nicolas Péridy: "An Appraisal of the Impact of EEC Preferential Tariff Policy on Morocco's Export Performance through the Application of Temporal Cross-Sectoral Generalised Gravity Models: A Comparison with Tunisia", EUI Ph.D. thesis, Florence 1988, p. 49, who has written that: "The fact that the Moroccan exporters interviewed argue that VERs have a negative impact on the exports of pants and shirts is certainly justified. However, from a macroeconomic point of view it seems unlikely that VERs have a significant impact on Morocco's export performance in the whole industrial sector".

¹³⁸ See Sanjoy Bagchi: "The Integration of the Textile Trade into GATT", *JWT* Vol. 28 No. 6, p. 31.

examine the agriculture trade situation as of 1 January 2000, in order to establish new reciprocal concessions, which will be in line with the overall objective of gradually liberalising trade in this sector. It should be stated here that free market access for most agricultural exports was already in force from Cooperation Agreements and that the EMAs only confirmed this *status quo*.¹³⁹ However, this *status quo* does not mean that market access had been noticeably improved. Essentially, it has maintained the preferences on agricultural products by that share of the Community's consumption not covered by its own production. In this sense, preferences were tailored to preclude competition with EC producers; hence, restrictions were more generous on products with deficits throughout the year, but varied over the year on goods, which were subject to seasonal gluts. This approach derives directly from CAP rules and includes the application of countervailing taxes,¹⁴⁰ import calendars, tariff quotas, quality controls, etc., and for the export of sensitive products such as olive oil, as well as certain fruits and vegetables. It is likely that, in mirroring the *ex-ante* commercial situation regarding agricultural products, the EC is only going to be criticised again.¹⁴¹

c) Safeguards: Particular bilateral trade features have been taken into account in order to provide safeguards in Chapter III. Following along the lines of the EMA with Tunisia, Art. 20 allow the parties to modify the arrangements laid down in their own individual EMA with respect to agricultural products, as a result of their agricultural policies or in modifying the existing rules. Obviously, any modification must be notified to the Association Committee.

It should be noted that, as is the case with EAs, i.e. Art. 28 EC-Poland, there is no provision in EMAs concerning measures to be taken in order to protect newly emerging

¹³⁹ See Francesa Martines, op. cit., p. 90, who states that: "The preferential treatment granted by the Community to imports of agricultural products from Maghreb countries is the reduction of customs duties covering 80-90% of the exported products".

¹⁴⁰ Countervailing tax can be defined as the difference between the entry price and the reference price.

¹⁴¹ See Nicolas Péridy, who has asserted that: "As far as the tariff contents of the agreement are concerned, it seems that their scope has been limited by the existence of detrimental factors, related especially to agricultural and textile markets", op. cit., p. 32. See also Lionel Fontagné and Nicolas Péridy, who point out that the gains might be small and limited to food products. However, even regarding these kind of products the EC's concessions have been very narrow, op. cit., p. 17.

industries or those industries undergoing restrictions or facing serious difficulties. However, at the same time, Art. 25 and 26 resemble Art. 30 and 31 EC Poland. The procedure for implementing safeguards is provided for in Art. 27 stating that the safeguards have to be notified immediately and they must be subject to periodic consultation (Art. 33 EC-Poland).

3.2.2 Trade in Services

The basis for the free movement of services is the prohibition of discrimination, in particular on the grounds of nationality, and rules on the alignment of divergent sets of national legislation. These rules often concern both the right of establishment, which comes under the heading of the free movement of persons, and the freedom to provide services. Their implementation implies the establishment of administrative structures (banking control boards, audio-visual control authorities, regulations bodies, etc.) and greater cooperation between countries in the area of enforcement (in the form of mutual recognition arrangements). A substantial amount of the legislation applicable to the free movement of services relates to the financial services sector. It also concerns problems relating to the opening-up of national markets in sectors which have traditionally been dominated by monopolies, for example, in the telecommunications, energy, and transport sectors. It should be added that the negotiations in services is a cause for mixity, since Opinion 1/94 has ruled this matter falls outside the scope of the Common Commercial Policy provided for in Art. 113. This Opinion has supported the member states's position as to recognise their exclusive in this matter. Paradoxically, all the WTO members have assumed that trade in goods and trade in services fall under the same commercial policy concept.

3.2.2.1 European Agreements

a) Free Movement of Workers: Mainly on account of reservations held by the EC, no common labour market is envisaged. The EAs only provide for the non-discriminatory treatment of workers who are legally employed in one of the parties to the agreement. This

non-discriminatory protection refers to working conditions, remuneration or dismissal. Families of legally employed workers also enjoy access to the labour market of the host member states.

The wording of the provisions made it clear that this matter would undoubtedly be left in the hands of the individual member states.¹⁴² Thus, Art. 41 rules that taking into account the labour market situation in the member states, subject to each country own's legislation, and to rules in force in each *member states*, being respected that: i) the existing facilities accorded by member states under bilateral agreements ought to be preserved and if possible improved; and ii) other member states shall consider favourably the possibility of concluding similar agreements.

On the other hand, the right to a work permit does not exist, even in the case of those people who are legally resident in a member state, a fact which is made clear in Art. 41(3) EC-Poland EA.¹⁴³ Pursuant to this provision the member states may examine the possibility of granting work permit to polish nationals whom already posses a residence permit. Following this line of argument, the Association Council was only empowered to issue 'recommendations' in order to encourage a higher level of commitments regarding the movement of workers, and only from the second stage of the agreement, but cannot take any 'decision' on it.

Thus, the EAs provisions on the free movement of workers are not really providing for such matter; indeed, they markedly depart from those provisions agreed in the European Economic Agreement (EEA), in force since 1 January 1994,¹⁴⁴ where Arts. 28-30 provide for wide-ranging rights regarding the free movement of persons in an attempt to extend Art. 48 EC Treaty and the legislation based on it.

¹⁴² See Marise Cremona who concludes that: "No rights of entry into the Community are given, the prerogatives of the member states in controlling immigration are maintained, and existing bilateral arrangements preserved", in "Free Movement of Persons, Establishment and Services", M. Marescaeu (ed.) *Enlarging the EU: Relations between the EU and Central and Eastern European Countries*, op. cit., p. 197,

¹⁴³ There is no equivalent in the EAs between EC and Hungary.

¹⁴⁴ OJ L 1/1994.

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b) **Right of Establishment:** Unlike the provisions on the movement of workers, the EAs provide for gradual liberalisation for the establishment¹⁴⁵ of EU companies and nationals.¹⁴⁶ During the transitional period, the EAs established that the associated country would provide equal treatment to EU companies, as that accorded to its national companies, from the entry into force of the agreement. In addition, every piece of legislation, which goes against or provides for differentiated treatment must be amended, particularly, regarding to the right to acquire, use and sell real estate property. Likewise, the possibility of leasing natural resources must also be secured.

On the other hand, companies are entitled to employ key personnel in accordance with the legislation in the host country.¹⁴⁷ To avoid the misuse or misinterpretation of its meaning, the term key personnel is defined as senior employees who direct the management of an organisation or persons who possess high or uncommon qualifications or knowledge. Finally, Art. 50 provides for the possibility of additional protection for industries which are undergoing restructuring, those facing serious difficulties, or those facing the elimination of, or a drastic reduction in their total market share.

In sum, the Chapter on establishment largely refers to the changes that must be introduced in the legislation of the associated states, rather than in the member states. Obviously, there is a shared interest in developing this area as quickly as the economic and political conditions in the associated countries allow. On the EC's side, the interest lies with companies willing to invest in, and provide for the services in a region where there still appears to be a captive market. To do this, investors need to be provided with a legal and secured framework that protects their investments. For its part, the associated states' interest focus on creating a healthy legal environment, which favours and fosters foreign investments.

¹⁴⁵ Establishment is defined in Art. 44(1)(a) EC-Poland EA, following the example of Art. 52 EC Treaty, and not only includes the pursuit of economic activity on a self-employed basis, but also provides for the setting up and managing of undertakings.

¹⁴⁶ Art. 44 EC-Poland and EC-Hungary EAs.

¹⁴⁷ Art. 52 EC-Poland and EC-Hungary EAs.

c) **Supplies of services:** The EAs do not, however, establish a common market for services. They simply request that the signatories "take the necessary steps to allow progressively the supply of services". Therefore, no commitments were undertaken regarding restrictions on the supply of services, except for a reference envisaging the liberalisation of rules on employment for key personnel.

Transport services and maritime transport are dealt with separately. As regards the latter, both parties agreed to unrestricted access to the market on a commercial basis and also confirmed their commitment to free competition in bulk trade, while entrusting the regulation of air and inland transport to bilateral agreements.

In explaining the moderate level of commitments reached, Marise Cremona¹⁴⁸ argues that: "At time when the EAs were negotiated, the GATS agreement had not yet been finalised and the Community in particular was not prepared to enter specific timetable commitments outside GATS". However, as a considerable timespan has elapsed since the EAs were implemented, without any progress in the subject, it seems that the EC's strategy is to deal with the services sectors from a multilateral perspective. It should also be added that services within the EU have only recently become subject to the harmonisation processes; hence, in so far as the single market is not yet accomplished, bilateral commitments at international level seem also hardly achievable.

3.2.2.2 Euro-Mediterranean Agreements

Provisions on services are provided for in a modest Title III on the Right of Establishment and Services (Art. 31-31). It is modest, because the EMAs do not entail any commitment to the liberalisation of the services sector, while the provisions actually limit the scope by stating that the Association Council will make recommendations for the agreement to cover the right of establishment and the liberalisation of services. Meanwhile, the contracting parties reaffirmed the obligations undertaken in GATS, particularly the obligation to grant reciprocal MFN treatment, which does not in fact mean very much. It should be underscored that the Med countries committed scarcely 6% of their services sectors to the MNF and to market access principles under GATS rules, compared to an

equivalent figure of 26% for the EU.¹⁴⁹ The lack of substantive commitment in services was hardly calculated to enhance foreign investments in the Med countries, since the absence of an adequate legal framework renders any possible investment as less attractive. Furthermore, contrary to the commitments agreed to in the EAs, where the establishment of EU companies and nationals is granted (except for water transport and maritime cabotage) on the basis of gradual liberalisation, the EMAs fall far short in only mentioning it in a Title. It is also worth noting that the movement of workers was completely omitted from this Title, while the supply of services is on an equal footing in both the EAs and the EMAs, since no commitments were made. The EU's shyness in negotiating market access with the Med countries appears to be biased because of its sensibility towards labour movements in the services sector (immigration). This argument is buttressed by the absence of any references to the movement of workers and because of the treatment given to the same matter in the Cooperation Agreements concluded with Morocco and Algeria in 1976.¹⁵⁰

On the other hand, the provisions agreed to liberalise trade in services, especially the right of establishment, are usually inextricably linked to foreign direct investment (FDI) flows. As one of the aims of the EMAs was to foster foreign investments from EU countries, the provisions should at least reflect the same level of commitment already agreed with the CEECs. Arguably, the EC's FDI in Morocco, the largest recipient among the three Maghreb countries, accounted for only 2,5% of total Moroccan inward investment during the years 1985-1992. Moreover, 77% of France's FDI in developing countries in the period 1990-1991 was addressed towards Europe and Asia, while only 11% went to the Maghreb and to the Middle East. The fact is that traditionally France has been the closest EU country in the Med basin, because of its old role of Metropolis.¹⁵¹

¹⁴⁸ Marise Cremona, op. cit., p. 204.

¹⁴⁹ Mahmoud Mohieldin: "The Egypt-EU Partnership Agreement and Liberalisation of Services", in Ahmed Galal and Bernard Hoekman (eds.) *Regional Partners in Global Markets: Limits and Possibilities of the Med-Agreements*, Centre for Economic Policy Research, London, UK, 1997, p. 242, who points out that these figures change in a way if any service sector, where commitments were made, are taken into account, that is to say, even if not guaranteeing national treatment and market access, the EU scheduled 57% and the Middle East and North African members of the WTO only 16%.

¹⁵⁰ These Cooperation Agreements included an especial Title on "Cooperation in the Field of Labour", which bears out the traditional EU concerns regarding immigration from the south.

¹⁵¹ See Lionel Fontagné and Nicolas Péridy, op. cit., p. 23.

3.3 DEVELOPMENT COOPERATION OBJECTIVES

Development Cooperation¹⁵² (DC) is an outstanding feature of the EU's foreign policy, with no comparative process existing in the foreign policies of other industrialised countries. In its broadest sense, DC covers a variety and complex number of measures and instruments ranging from occasional and technical assistance, to financial cooperation, as well as some trade arrangements embracing public and private actors. From this point of view, all measures whose aim is assisting developing countries may be qualified as DC.

As to its basis in EC law, it is worth noting that DC was originally provided for in Art. 3 (r) EC Treaty¹⁵³ with regard to some former member states' colonies, stating that a purpose of the EC was for the association of overseas countries and territories in order "to increase trade and promote jointly economic and social development". However, no competence was allocated at EC level to negotiate such a content in international agreements, a legal gap that was overcome by using Art. 235 EC Treaty.

Not surprisingly, DC has been increasing in dimension while forging an important section of the EC's foreign policy. Actually, the management of DC has traditionally given rise to hostility and jostling for position between the Commission and the member states. The former intended to become the manager and public face of DC, while the latter group was not amenable to the idea of devoting what they considered a meaningful part of their foreign policy to this concept.

Be that as it may, the EU has devised, in conjunction with the member states, a *modus vivendi* that enables it to put into motion several EC-DC instruments, coordinated by the Commission with the wide participation of the member states. At the same time, member states have kept in reserve the so-called "Canadian clause", which allows them to carry out DC programmes independently of those being implemented at Community level. The current trend is for the Commission to coordinate the implementation of all of the resources allocated for DC purposes through the EU budget, and even for it to direct some supplementary funds allocated by the member states.

¹⁵² For further legal analysis, see also *infra* Section 7.3.3.

3.3.1 Development Cooperation Content

In exploring the DC's content as part of the third generation AAs, it should be pointed out that, in a broad sense, Titles on cultural cooperation, financial aid, or social aspects are all part of a policy on DC. However, in a restricted sense, only the Title on Economic Cooperation may be regarded as providing for this policy.

In the case of the AAs, DC is provided for based on a legal technique that evidences the EU's unique and long-standing background in this area. Arguably, the Title on Economic Cooperation provides for the objectives and fields wherein cooperation may later be implemented through different instruments that the parties may foresee, such as protocols and programmes. The DC fields covered by AAs follow a similar pattern to those in all EAs and also in the EMAs. Taking the DC fields covered by the EC-Poland EA as a model, it is possible to conclude that all of the areas covered by this model are also embraced by the EC-Hungary EA, except for three fields: i) water management; ii) audits and financial controls; and iii) public administration cooperation.

On the other hand, in comparing this model with the Tunisian EMA, it follows that fields such as the approximation of laws and fisheries are only envisaged in the latter, while nuclear safety, social cooperation, small and medium-sized cooperation, and information and communication fields deserved no mention. Explaining this imbalance, it should be observed that the approximation of laws is part of Title V of the EC-Poland EA, which deals with Payments, Capital, Competition and Other Economic Provisions, and the Approximation of Laws. Fisheries are part of the liberalisation process dealt with in Title III on the Free Movement of Goods. As regards nuclear safety, information and communication, it is tempting to argue that they do not constitute what could be termed a real interest for both parties.

Finally, concerning social cooperation, it must be said that this field deserved to be provided for in Title IV of the Tunisian EMA, in conjunction with cultural matters, while the reason for the omission of small and medium-sized cooperation also remains uncertain.

¹⁵³ This provision is the formal expression of Part IV EC Treaty (Association of the Overseas Countries and

Development Cooperation: Draft Title VI - Poland-16A	
*Industrial Cooperation	*Banking, insurance and others
*Investment promotion and protection	*Monetary policy
*Industrial standards and conformity assessment	*Money laundering
*Cooperation in science and technology	*Regional development
*Education and training	*Social cooperation
*Agriculture and agro-industrial sector	*Tourism
*Transport	*Small and medium-sized enterprises
*Telecommunications and postal services	*Information and communication
*Broadcasting	*Customs
*Energy	*Statistical
*Nuclear safety	*Economic
*Environment	*Drugs

In attempting to cast more light on this issue, it should be noted that, the fact that the parties agreed to cover certain fields within the Title on Economic Cooperation, it does not imply *per se* that assistance will effectively be carried out on it. Mentioning particular fields only signifies that the parties are willing to implement assistance programmes in the area defined. On the other hand, the parties may also agree to devote a special Title with regard to the treatment of a traditional field of cooperation. This does not imply that the fields lose their DC nature, but it is a way to buttress the importance attached to such a field in the bilateral relationship. This legal technique was used, for instance, in Title VII of the EAs on "Cultural Cooperation" (Title VI in the EMAs), which have traditionally been part of the Title on Economic Cooperation. In the same way, the "Approximation of Laws" deserved to be dealt with in Title V of the EAs, while in EMAs this was included among the fields mentioned under the Title on Economic Cooperation. In this case, it is clear that these differences arise from the fact that, in regard to EAs, an accession process is envisaged, while EMAs are devoid of such an aim

Territories), which gave rise to the Yaoundé Convention and later again to the Lomé Convention.

3.3.2 Implementation

Traditionally, DC has been implemented through flexible and bilaterally negotiated instruments, which have been especially tailored to handle bilateral cooperation schemes. These instruments also envisage the fields and the bodies needed to carry out such cooperation successfully.

In the case of the CEECs, at the very outset of the collapse of the communist regimes, the EC decided to aid their development by approving the Poland-Hungary Aid for Reconstruction of Economy programme in 1989, better known as the PHARE programme.¹⁵⁴ As is made clear in its title, PHARE was originally only addressed at Poland and Hungary, but it did not take long for its scope to be widened to cover most of the CEECs. Besides this development, its transitional nature was also removed so that the programme is no longer limited in time. The main goal of PHARE is to grant assistance to CEECs in agreed priority areas,¹⁵⁵ and in such a way that it does not have to be repaid by the recipients.

By virtue of PHARE, ECU 5,000 million have been disbursed directly from the EC budget; these monies were transferred to the recipients between 1989 and 1993.¹⁵⁶ At the bureaucratic level, PHARE is administered by the Commission's PHARE Operational Service, and a PHARE Management Committee. The latter consists of the member states' officials, which is chaired by the Commission. This body considers each financial proposal laid before it by the Commission and gives an opinion on each case's merits. A relevant point to note is that PHARE's regulations provide that account must be taken of the preferences and opinions of the recipient state. This has made PHARE a *de facto* demand-driven programme. A major change in the programme was introduced following the Essen

¹⁵⁴ Council Regulation 3906/89.

¹⁵⁵ See Alan Mathew: "PHARE: The EC's Programme of Assistance to the Countries of Central and Eastern Europe", University of Economics, Poznan, WP No. 2, 1992, p. 5, who has written that: "The fact that PHARE assistance is grant aid does not of course mean that it can not be used for financing loans to enterprises, or credit guarantees or other types of non-grant finance".

¹⁵⁶ See B. Freeman: "Assessment of the various parts of the PHARE Programme and the other forms of financial assistance", in *Cooperation with the Countries of Central and Eastern Europe, European Court of Auditors*, European Commission 1994, p. 42. Actually ECU 14,000 million were driven to CEECs between 1989 and 1993, it broke down as follows: ECU 5,000: PHARE; ECU 6,000: Loans; ECU 3,000: Humanitarian aid.



European Council in December 1994, which adopted a pre-accession strategy for the CEECs, when proposing the so-called "structured dialogue" and the PHARE programme as its financial instrument. Hence, PHARE was re-oriented to "help the associated countries to absorb the *acquis communautaire* and to complete market reforms and medium-term restructuring of their economies and societies so as to create the conditions required for future membership".

Within this new approach, priority objectives were adopted to promote the approximation of laws and standards, as well as others to encourage the economic reform process. With a PHARE programme, which has reshaped its aims, a multi-annual planning was also introduced, allocating a total of ECU 6,693 million for the period between 1995-1999 which rises in annual terms from ECU 1,154 million in 1995 to ECU 1,634 million in 1999.¹⁵⁷ The implementation of the programme is organised through a process of shared responsibility between the Commission in Brussels, its local delegations, and the partner country. Evaluation and monitoring tasks are accomplished by three regional offices with independent consultants, who are to examine more than 400 projects each year.¹⁵⁸ Taking Hungary¹⁵⁹ as an example, it is possible to show that, in 1995, PHARE grants were distributed as follows (figures in ECU millions):

1995	1996	1997	1998	1999
41	21	16	3	2
Infrastructure	Economic restructuring	Training and Education	Promoting conformity with EU	Administration reform
				Other objectives

As regards the Med countries, since the entry into force of the second generation of AAs in 1976, the EC has been granting DC to them by concluding financial and technical

¹⁵⁷ In budgetary terms, PHARE consists of five lines: B7-5200 (democracy); B7-6000 (economic restructuring); B7-6020 (cross-border cooperation); B7-6310 (NGOs); B7-6330 (access to Community programmes).

¹⁵⁸ See Maryin Hallet: "National and Regional Development in Central and Eastern Europe: Implications for European Union Structural Assistance", Economic Paper, European Commission, Directorate-General for Economic and Financial Affairs, No. 120, 1997, p. 23.

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protocols. The fourth financial protocol between the EC and the Med countries was established for the 1992-1996 period and committed ECU 574 million, of which ECU 250 million came from budget funds and ECU 324 million from EIB's own resources.¹⁶⁰ Unlike the first three protocols, which were basically aimed at infrastructure, agriculture, rural development and vocational training, the fourth protocol was mainly targeted through assistance to back up economic reforms taking place in the Med countries.¹⁶¹ A general assessment of the aid granted indicates that since 1992, ECU 165.05 million have been committed and ECU 65.47 million disbursed from the EU's budgetary funds. As of 31 December 1994, the projects, programmes and activities funded from the Commission's budgetary funds could be grouped according to the priority, which are displayed in the following table:

Priority	Percentage
Decentralised cooperation*	48%
Environment	22%
Micro projects**	9%
Population issues	6%
Training-Education	5%
Peace process	3%
Culture-Communication	2%
Small items	5%

* Includes the following programmes which essentially aim at creating or strengthening civil society's links, not only between the Community and its Southern and Eastern Mediterranean partners, but also, between the partners themselves: i) Med-Invest; ii) Med-Urbs; iii) Med-Campus; iv) Mod- Media; and v) Mod-Avicenne.

** Including technical assistance training and seminars, studies and trade promotion.

¹⁵⁹ See "Central and Eastern European Countries on the Way into the EU", Werner Weidenfeld (ed.), Bertelsmann Foundation Publishers, Germany, 1996, p. 109.

¹⁶⁰ See Commission Report to the Council and the Parliament on the Implementation of Financial and Technical Cooperation with Mediterranean non Member Countries, 1994, COM (96) 151 final, 2 May 1996.

¹⁶¹ Furthermore a special package of EC 300 million was allocated to a structural adjustment programme. In addition, ECU 80 million from budget funds was earmarked as risk capital, comparing to ECU 31 million under the third protocol. Finally Med-countries qualified for the European Community Investment Partner (ECIP) funds to the tune of ECU 8 million. The ECIP is a flexible programme designed to promote joint ventures or licensing agreements between EU members and developing countries, including Mediterranean, Asian and Latin American countries.

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The Cannes European Council held between 25 and 26 June 1995 established the general principles necessary for the future of the Euro-Mediterranean Partnership and, indeed, the EU's financial commitments for the 1995-1999 period. The scheme proposed is based on the following principles: i) peace, stability and the promotion of human rights; ii) the liberalisation and upgrading of Med-economies; iii) partnership with the EU and between Med countries; and iv) redirecting of EU financial commitments towards the Med region after a long period of high financial transfer to the CEECs.

The EU's financial commitments followed a strategy that may be divided into three points. Firstly, it offered ECU 4,685 million to the Med-countries during the period 1995-1999. Secondly, the EIB increased its loans to the region. Finally, the EU's member states undertook to increase their bilateral aid to the Med countries, at a level which has not yet been officially defined.¹⁶²

Later on, in 1995, the Commission proposed a new instrument to deal with cooperation, which was intended for the period after 1996. This was known as the MEDA Programme, a proposal which gave rise to Council Regulation 1488/96¹⁶³ and concentrates on financial and technical measures which are to accompany the reform of the economic and social situation. This MEDA regulation represents the EC's main financial instrument for implementing the Euro-Mediterranean Partnership. The principal purpose of MEDA is to encourage and support the reform of the economic and social structures of the Med-partners, notably in preparation for the onset of full free trade with the EC.¹⁶⁴

¹⁶² Officially the amount has not been fixed, but a figure of ECU 4.7 billion has been mentioned.

¹⁶³ OJ L 189/1996.

¹⁶⁴ See, in addition, the Council Decision of 6 December 1996 concerning the adoption of the guidelines for the indicative programmes concerning financial and technical measures to accompany the reform of economic and social structure in the framework of the Euro-Mediterranean Partnership, OJ L 325/1996.

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PART II

4. LATIN AMERICA AS A CASE OF STUDY

The current international economy has its origins in the Bretton Woods system created in 1944. This system was underpinned by the creation of two international institutions, i.e. the International Monetary Fund (IMF) and the World Bank (WB), which were intended to cover the financing and banking needs of the global economy. By 1946, over forty states had enrolled in the system, and of these, no less than eighteen were Latin American (LA) countries, a figure which contrasts with what came to scarcely 6% of the total initial contributions to the IMF's resources coming from this region. In parallel, most of the LA countries also entered into the GATT, which was the multilateral forum and legal framework devised to rule the international trade system. Bretton Woods system and GATT were intended as means to help reconfigure the pre-war *status quo*. Thus, Bretton Woods introduced changes in order to prevent competitive devaluation of the national currencies and to open up the domestic markets to international competitiveness. However, the LA region did not gear itself up properly for the new trade and financing scenario.

IMF membership brought with it an obligation on all members to supply confidential information on their own individual economies and, in addition, the likelihood of restrictions on their freedom of economy policy-making. Nevertheless, the principal attraction that Bretton Woods offered to LA countries, was the prospect of benefiting from a stable and open trading system, along with the hope of receiving large inflows of development finance on favourable terms.¹⁶⁵

In the event, however, trade and capital inflows mostly flourished in the industrial countries, while the LA states ranked rather low in the statistical data of both of these categories. This isolation of the LA countries from the international economic stage is largely explained by a political economy decision that they made in the years following the Bretton Woods system. Most of the LA countries decided to engage in the so-called

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. It begins with the first settlers, who came to the Americas in search of a new life. They found a land of opportunity, but also a land of challenge. The early years were marked by conflict and struggle, as the settlers fought to establish a new society. Over time, the United States grew from a small colony into a powerful nation. It became a land of freedom and opportunity, where people from all over the world could come and build a better life. The history of the United States is a story of resilience and strength, of a people who have overcome many challenges and emerged as a great nation.

The early years of the United States were marked by conflict and struggle. The settlers fought to establish a new society, and they faced many challenges along the way. They had to fight against the forces of nature, and they had to fight against the forces of man. But they persevered, and they eventually established a new society that was based on the principles of freedom and opportunity. This society grew and changed over time, and it became a powerful nation that was respected by all.

The United States has a long and rich history, and it has many things to be proud of. It is a land of freedom and opportunity, where people from all over the world can come and build a better life. It is a land of resilience and strength, where people have overcome many challenges and emerged as a great nation. The history of the United States is a story of growth and change, and it is a story that we should all be proud of.

structuralism doctrine that was being professed by the Economic Commission for Latin America and the Caribbean (ECLAC). The ECLAC proposals consisted of implementing an inward-oriented growth policy based on import-substitution industrialisation (ISI). This policy called for high protectionism and severe anti-export bias. Hence, by taking this structural flaw into account, it is easy to understand why the LA countries were hardly able to engage in the international trade system. As for capital inflows, these tended to avoid the LA countries altogether for a number of reasons. Firstly, the capital account in the LA region used to be rigidly regulated, while banking and financing activities were domestically restrained. Secondly, FDI often lacked a legal framework to protect it or, in the case of this structure already existing, it usually hindered its scope. Furthermore, nationalisation and statisation processes were, by no means, the exception, thus also influencing decision-making process of investors. Thirdly, the LA countries were generally reluctant to make use of the financing resources provided for the IMF, because they often also entailed additional conditions on economic policy.¹⁶⁶ Normally, such additional conditions advocated even greater openness in a country's trade policy and recommended that a strict discipline be exercised over the exchange rate rules.

The evidence suggests that, at the beginning of the 1970s, while structuralism declined to foster growth, the IMF gained valuable ground in spreading its economic model. Arguably, the IMF's intervention in the LA region was also facilitated by other phenomena. Firstly, a new generation of economists trained in the Chicago School of Economics, known (mainly in Chile) as the 'Chicago Boys' attained privileged positions in economic decision-making process. Secondly, over the years, the financing resources provided by the IMF were ever assessed as a last resort to deal with endemic macroeconomics instability, which was often provoked by a traditional populism.¹⁶⁷

¹⁶⁵ This was the reason why Argentina, although at the beginning reluctant, finally entered into the system in 1955.

¹⁶⁶ For instance, Brazil withdrew its first request for US\$15 million in 1949, because it called into question the nature of the conditions attached by the IMF.

¹⁶⁷ Macroeconomics instability has long been a paramount characteristic of the LA countries' economies. Inflationary outburst, balance of payments crises, and painful stabilisation attempts have usually prevailed in the economic history of the region. It is interesting to quote Sebastian Edwards: "The Macroeconomics of Populism", in Rudiger Dornmusch and Sebastian Edwards (eds.) *The Macroeconomics of Populism in Latin America*, University of Chicago, USA, 1991, p.7, when he says: "Again and again, and in country after

Thus, the dichotomy existing between ECLAC-structuralism and the IMF-Chicago Boys has not only domestically determined the political choices in political economy, but also in the LA countries' external policies and the way in which they have tried to engage upon the international stage. This controversy has also greatly influenced the EU-LA relationships. This thesis argues that the current Political and Economic Association being projected by the EU with Chile, the Common Southern Market countries (Mercosur) and Mexico, has its roots in the economic shift made by this group of countries. In this sense, it is also argued that, traditionally speaking, EU-LA relations were mainly based upon development cooperation (third AA's content) until the economic upturn demonstrated some success. Thereafter, the EC's external policy changed its pattern. A first significant approach to the region was, at the beginning of the 1990s, to negotiate the so-called 'Cooperation Agreements' with almost all the LA countries. These types of agreements were mainly aimed at clarifying the areas where development cooperation (second AA's content) should later materialise. No political dialogue nor trade objectives were then envisaged. A second approach towards the LA countries was to identify potential partners in order to deepen bilateral relationships. A criterion for such partnership was that they must be politically stable and economically emergent states. According with this view only Chile, Mexico and Mercosur countries were thus to be considered as trustful future partners. In order to deepen these relationships, so-called "Framework Cooperation Agreements", whose ultimate goal was Political and Economic Association, were concluded with the countries previously mentioned. These agreements included a political dialogue (first AA's content), as well as an even more structured development cooperation content (third AA's content); while trade objectives (second AA's content) were delayed until the envisaged Association were concluded. It is remarkable that the democratic clause, part of the first AA's content, was present in every approach as an essential element of the agreement.

The lack of commercial objectives in the EC's policy towards LA is still one of the most outstanding features of this bilateral relationship. This has become a key point,

country, policymakers have embraced economic programs that rely heavily on the use of expansive fiscal and credit policies and overvalued currency to accelerate growth and redistribution income (...) In the aftermath of

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because, while some LA countries have expressed their readiness to increase the exchanges, the EU has behaved rather reluctantly. It should be noted that, more than thirty years prior to these developments, the Martino Report on the EEC's Relationship with Latin America underscored that the "politic problems in the region were mainly caused by economic stagnation", and then, it had encouraged the Council to foster stronger commercial links. However, the LA's economic performance was usually overlooked by the EU. The EC's association policy during the 1990s marks a change in this regard. The second section of this second part (section 5) is aimed at explaining the causes of this change. It therefore deals with the economic environment in LA, and by contrasting the main growth theories that have prevailed in this continent during the last fifty years, attempts to portray the economic trends triggered a change in the EC policy. Special attention is devoted to Chile, since this thesis mainly regards the EC's association policy in relation to that country. At the same time, an analysis of Chile serves its own objective by highlighting its specificity compared with the other LA's envisaged as associated countries (Mexico and Mercosur). This section deserves to be remarked upon, because its content have, unreasonably, been usually disregarded, in circumstances which, in fact, constitutes a very strong root resource of the EC's association policy pursued in the 1990s.

Section 6 briefly portrays the EC-LA relationship, pointing out the efforts made by the EC to get involved with the main social problems of the LA region, which are mainly poverty and human rights. Section 7 explores the current conventional state of EC-Chile bilateral relations, as delimited by the Framework Cooperation Agreement (FCA) concluded in June 1996, and in the light of the tridimensional AA's content previously mentioned. In this regard, it appears that the current relationships only embrace political dialogue and democratic clause (first AA's content), and development cooperation (third AA's content). As regards trade objectives (second AA's content), although envisaged as an ultimate goal -as the sentence "preparing the way for the progressive and reciprocal liberalisation of trade" overtly suggests-, are absent. Accordingly, the state of political dialogue and the democratic clause, their nature and contents, and the EC competence to

these experiments there is no other alternative left but to implement, typically with the help of the International Monetary Fund (IMF), a drastically restrictive and costly stabilization".

negotiate them in international agreements, is surveyed. Likewise, the legal roots of development cooperation are also discussed. A comparison between the contents of both political and economic development cooperation contents is drawn as regards the EAs and the EMAs. Finally, despite the second AA's content continued absence in conventional terms, some projections are made in this respect.

5. THE LA'S QUEST FOR AN ECONOMIC GROWTH MODEL.

The quest for clues of rapid economic growth has always been the gist, as well as the puzzle, of the economic science. The social variables present in the economic performance experienced by different economies in a given period, indeed, the way such variables inter-act each other, have thus far constituted the centrepiece for political economy discipline. The debate on this issue has slowly embraced other sciences and disciplines, including international relations and law, since many answers have been found in those underpinning economic growth in cooperative economic models. Therefore, cases of rapid growth, such as Germany or Japan, have become a paradigm. Yet, similar growth patterns in developing countries, such as those occurred in South Korea, Taiwan, the former UK territory of Hong-Kong, and Singapore, are immediately labelled as economic 'miracles' or 'tigers' economic. This consideration serves as an object in which to highlight the permanent and vivid interest of the LA region in forging a growth model compatible with its economic structure. In this regard, it may be asserted that the underlying problem of the LA region was, and is thus far, a traditionally poor economic performance. Arguably, in the aftermath of the second World War, the role of the LA countries was politically driven by the USA and its allies as a *cordonaire sanitaire*, which was symbolised, in turn, by the foundation of the Organisation of American States (OAS). Economically speaking, LA countries remained outsiders from the international trade system by engaging, for a long period, in an inward-oriented growth model.

At that time, a debate emerged over what long-term growth strategy the LA region should follow.¹⁶⁸ During the last fifty years the LA debate have been focused on two theories: the ECLAC-structuralism and the IMF-Chicago School for Economics. In this section the uneven quest for sustained economic growth is explored, by assuming that the shift made by some LA has finally matched up with the EC interests in the region. At the same time, this section also serves another goal, that of explaining the specificity of Chile

¹⁶⁸ See Anne O. Krueger: "Trade Policy and Economic Development: How We Learn", NBER WP No. 5896, January 1997, National Bureau of Economic Research, Cambridge, UK, 1997.

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 250 million to 450 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

1. *Chrysomelidae* (100%)

;

1. *Chlorophyll a* (Chl *a*)

and β_{12} are the regression coefficients of $\ln Y$ on $\ln X_1$ and $\ln X_2$, respectively. β_{12} is the elasticity of Y with respect to X_1 and β_{21} is the elasticity of Y with respect to X_2 . The regression coefficients β_{12} and β_{21} are estimated by the following equations:

1. *Journal of the American Medical Association*, 1997; 277: 1033-1037.

within the general context of the EC's association policy towards the LA region. It should be noted from the outset that Chile was not originally considered as an eligible country in this process. It is argued that its inclusion was mainly due to its economic performance and its highly globalised markets, aspects that matched with the existence of certain amount of political sympathy at EU level. In other words, the EC association policy towards the region has a highly economic background and orientation, which contrasts with the security objectives sought in the association through EAs and EMAs.¹⁶⁹

5.1 THREE STAGES IN THE QUEST

5.1.1 Economic Commission for Latin America Structuralism (1945-mid 1960s)

ECLAC-structuralism was first formulated by Raúl Prebisch, soon after he assumed his post as Secretary General of this institution in 1949.¹⁷⁰ Prebisch outlined his proposal by stating that technological process played a discriminatory role in international economic relations, since the empirical evidence revealed that the exporters of manufactured goods were essentially concentrated in developed countries, while the exporters of raw materials were mainly to be found in developing countries.¹⁷¹ Attempting to understand the inequality of this kind of discrimination, Prebisch concluded that "Latin America formed part of a system of international economic relations which [I] named the centre-periphery system".¹⁷² The centre-periphery relationship is determined by the existence of an industrialised centre and the no-industrialised periphery. Its most outstanding feature is the marked and secular tendency towards the deterioration of terms in trade. This is tantamount to saying that primary exports from peripheral countries had a secular tendency to

¹⁶⁹ See *supra* section 2.1.

¹⁷⁰ See Report on "The Economic Development of Latin America and its Principal Problems", ECLAC-UN, New York, 1950. See also "Economic Survey of Latin America, 1949", ECLAC-UN, New York, 1950.

¹⁷¹ For the social effects of discriminations in developing countries, see Raúl Prebisch: "The New International Economic Order and Cultural Values", Instituto de Cooperación Intercontinental, Madrid, Spain, 1978, especially section No. 3 which is entitled: "The impact of the Expansion of the Centers on the Social Structure of the Periphery", p. 32.

¹⁷² Raúl Prebisch: "Five Stages in my Thinking on Development", in Gerald M. Meier and Dudley Seers (eds.) *Pioneers in Development*, Oxford University Press for the World Bank, New York, 1994, p. 176.

1. *Journal of the American Medical Association*, 1990; 263: 1025-1028.

deteriorate *vis-à-vis* imported manufactured goods.¹⁷³ The outcome of this type of economic relationship between the centre and the periphery is called "dependence". This dependence hinders developing countries from engaging in sustained economic growth.

Structuralism, as is this theory of economic growth known,¹⁷⁴ stressed that this 'dependence' arises from the international division of labour and the trade system, as well as the exploitation and the historical rigidity of the social class structure. These are the variables which cause or prevent economic growth in the periphery. In order to overcome the centre-periphery paradigm, the structuralists suggested that the pattern of outward-oriented growth¹⁷⁵ must be change for an inward-oriented policy that allow countries to reach what should be the main aim of their economics, the process of industrialisation. This final target is to be achieved by displaying an ISI intended to shift the domestic terms of trade between agriculture and industry in favour of the latter. The ISI concept was underpinned by enacting high and differentiated external tariff protection and by using multiple exchange rates. In accord with these measures, which meant that domestic markets were secured for local industrial producers, the demands for imports were strongly discouraged.¹⁷⁶ Moreover, the state itself became deeply involved in the economy by setting up public enterprises in highly protected sectors, such as petroleum and minerals in general.¹⁷⁷

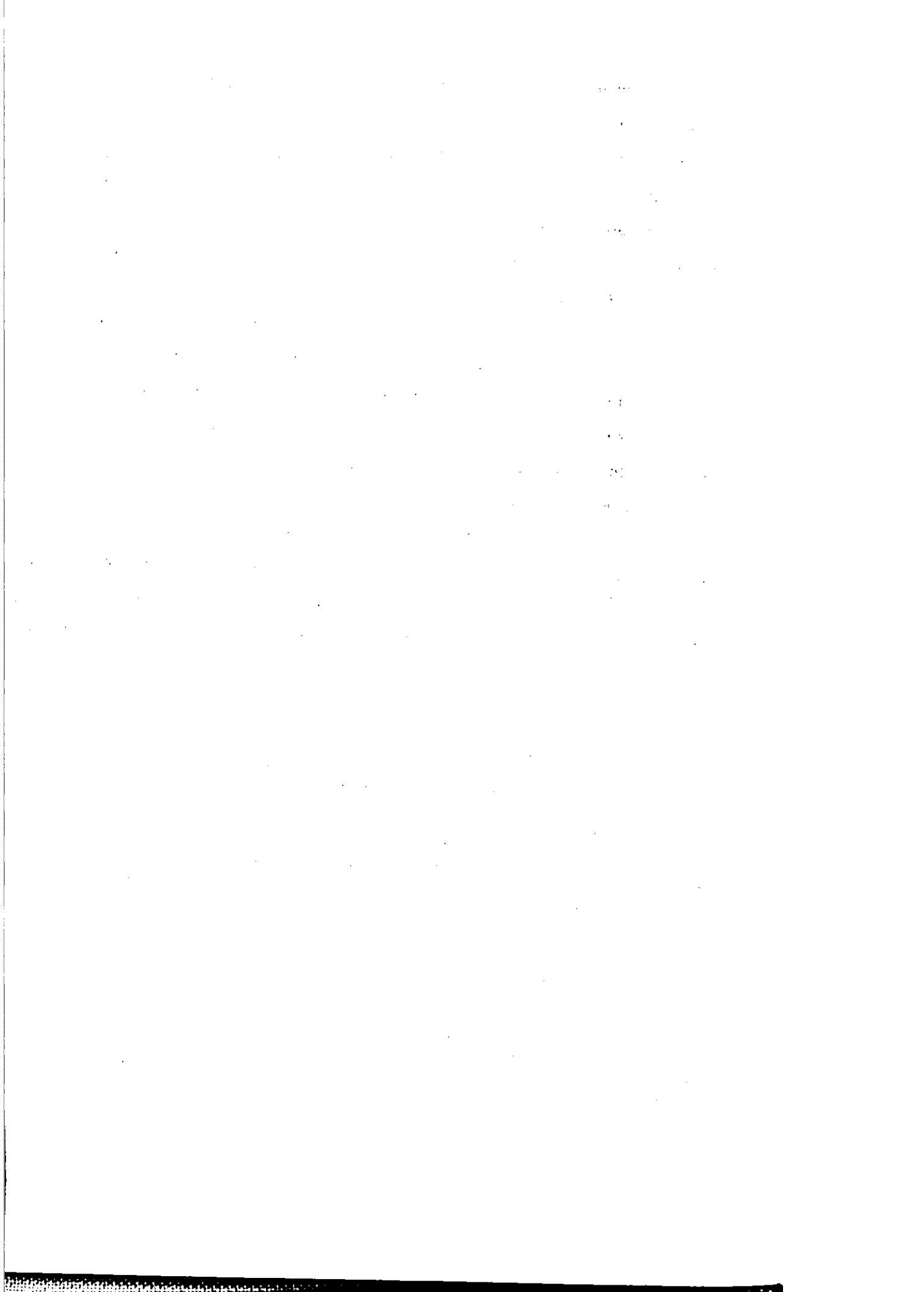
¹⁷³ Developing countries (periphery) were in clear disadvantage in exporting primary materials and importing value added technology and goods from the developed countries (centre).

¹⁷⁴ See Raúl Prebisch: "Dependence, Development and Interdependence", in Gustav Ranis and Paul Schultz (eds.) *The state of Development Economic: Progress and Perspectives*, Basil-Blackwell, New York, USA, 1988, p. 31, observes that: "Later the center-periphery concept was enriched with valuable contributions by sociologists, political scientists and economists, who look pains to point out internal phenomena inherent in the periphery which strengthened dependence relations". Furthermore, structuralism was followed and became the predominant theory in most of the LA countries, supported by Furtado in Brazil, Noyola in Mexico, and Ahumada and Sunkel in Chile. In addition, see Vittorio Corbo: "Problems, Development Theory, and Strategies of Latin America", in Gustav Ranis and Paul Schultz (eds.) *The State of Development Economics: Progress and Perspectives*, op. cit., p. 158.

¹⁷⁵ "Which I consider to be inaccessible of permitting the full development of those countries (LA)", see Raúl Prebisch: "Five Stages in my Thinking on Development", op. cit., p. 177.

¹⁷⁶ Clearly, the results of this policy was discrimination against imports, through the combination of an overvalued currency and high external tariffs.

¹⁷⁷ For a differentiation between 'state-led' and 'state-induced' growth strategy, see Frederic Deyo (ed.): "The Political Economy of the New Asian Industrialisation", Itahaca, Cornell University Press, 1987, p. 17, where is argued that, unlike the 'state-led' strategy, which entails continuing and selective intervention by the state agencies in the market, 'state-induced' strategy "emphasize the role of the private sector in implementing strategies within a broad political, legal, infrastructural, and economic framework that the state establishes to



The outcome of ECLA proposals was, at some intellectual levels, successful. For instance, in the 1950-1960 period the LA region grew at an average yearly rate of 4.8 per cent. In addition, ISI was able to create the conditions for heavy industries to be set up in the largest countries of the region, in turn becoming the engine in their economies in the 1970s.

5.1.2 A Transitional Period (mid 1960s-1974)

The prevailing structuralism started its decline from the mid-1960s and culminated in the economic turmoil of 1973-1974. Paradoxically, the lack of intermediate capital inputs, which were not available in the region, speeded up the dependence on the centre.¹⁷⁸ At the same time, the ISI policy had created a largely inefficient industrial sector due mainly to the absence of competitors. Furthermore, the resources available to the government were often "socially misallocated", a fact indicated by the substantial dispersion in public investment, which was often unrelated to or had a negligible effect on economic growth.¹⁷⁹ Finally, ISI policies also seriously affected the labour markets by focusing upon the creation of capital intensive industries,¹⁸⁰ while neglecting demand for labour in other sectors.

The LA countries gradually changed their economic policies in an attempt to take advantage of the dynamism of external trade and the emergence of new poles of demands. Governments assigned an important role to the promotion of exports and tried to liberalise imports, while establishing uniform exchange rates. All these measures were aimed at

pursue its chosen development objectives". In the LA region, the trend that the ECLAC postulated was to forge a 'state-led' strategy. In the case of Chile this trend gave rise to the 'Developmentalist and Entrepreneurial State' concept. See, for instance, Oscar Muñoz Gomá: "Chile y su Industrialización: Pasado, Crisis y Opciones", Cieplan, Santiago de Chile, 1986, p. 104, who holds that: "From being Chile an agent which set the institutional framework and defined certain general policies, the state shifted to perform a direct role in the promotion of development and participate in entrepreneurial activity".

¹⁷⁸ See Ricardo Hausmann and Helmut Reisen: "Securing Stability and Growth in Latin America", OECD, Paris, 1996, p. 12. In addition, see Sebastian Edwards: "Crisis and Reform in Latin America: From Dispair to Hope", Oxford University Press for the World Bank, 1995, p. 227, who also refers to this paradox by saying that precisely "the policies that were supposed to reduce Latin America's dependence on the world wide business cycle created instead a highly vulnerable economic structure".

¹⁷⁹ See Vittorio Corbo, op. cit., p. 161.

¹⁸⁰ See Ricardo Hausmann and Helmut Reisen, op. cit., p. 13.

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eliminating the distortions of the past by creating the conditions necessary for them to play a more relevant role in the international economy. Notably, it was Brazil, Chile, and Colombia, which embraced these progressive export-promotion schemes, by slowly reducing the level of import protectionism. Brazil was the first country to undertake this shift,¹⁸¹ followed by the Onganía government in Argentina (1966-1971) and Frei government in Chile (1964-1970). This trend was later deepened in Argentina, Chile, and Uruguay by putting in motion a comprehensive reform package, which was aimed at increasing the role of the markets in resource allocation and at reducing the existing bias against exports.¹⁸²

Clearly, Chile went furthest in its economic liberalisation, while Uruguay was in the middle, and Argentina moved the least. Not surprisingly, the liberalisation process implemented by these governments is coincident with the military government established in these three countries in the 1970s.

5.1.3 LA Liberalisation Process and the Debt Crisis (1974-1982)

By analysing the liberalisation process, which occurred in the LA region in the mid-1970s, two ideas should be firmly borne in mind. Firstly, this liberalisation was implemented in-depth in the Southern Cone countries, that is, in Argentina, Chile and Uruguay. These countries precisely were, by then, undergoing some extreme macroeconomic problems and widespread microeconomic distortions. Secondly, in all these countries, military governments took over the reins of political power and started to carry out economic reforms, which were in marked contrast to those proposed by ECLAC structuralism. It might be said that history plotted in order to get authoritarian political regimes and policies of the Chicago School of Economics policies together. This relationship paved the way in the LA countries for a liberalisation programme to be introduced for the first time, which was aimed at dismantling external tariff protection and

¹⁸¹ The measures adopted in the case of Brazil allowed it to enjoy a GDP growth at an average yearly rate of 11 per cent between 1968-1973 and later by 7.7 per cent between 1973-1977.

at deregulating the capital account. In parallel, legal frameworks were enacted favouring more permissive foreign investment regimes.

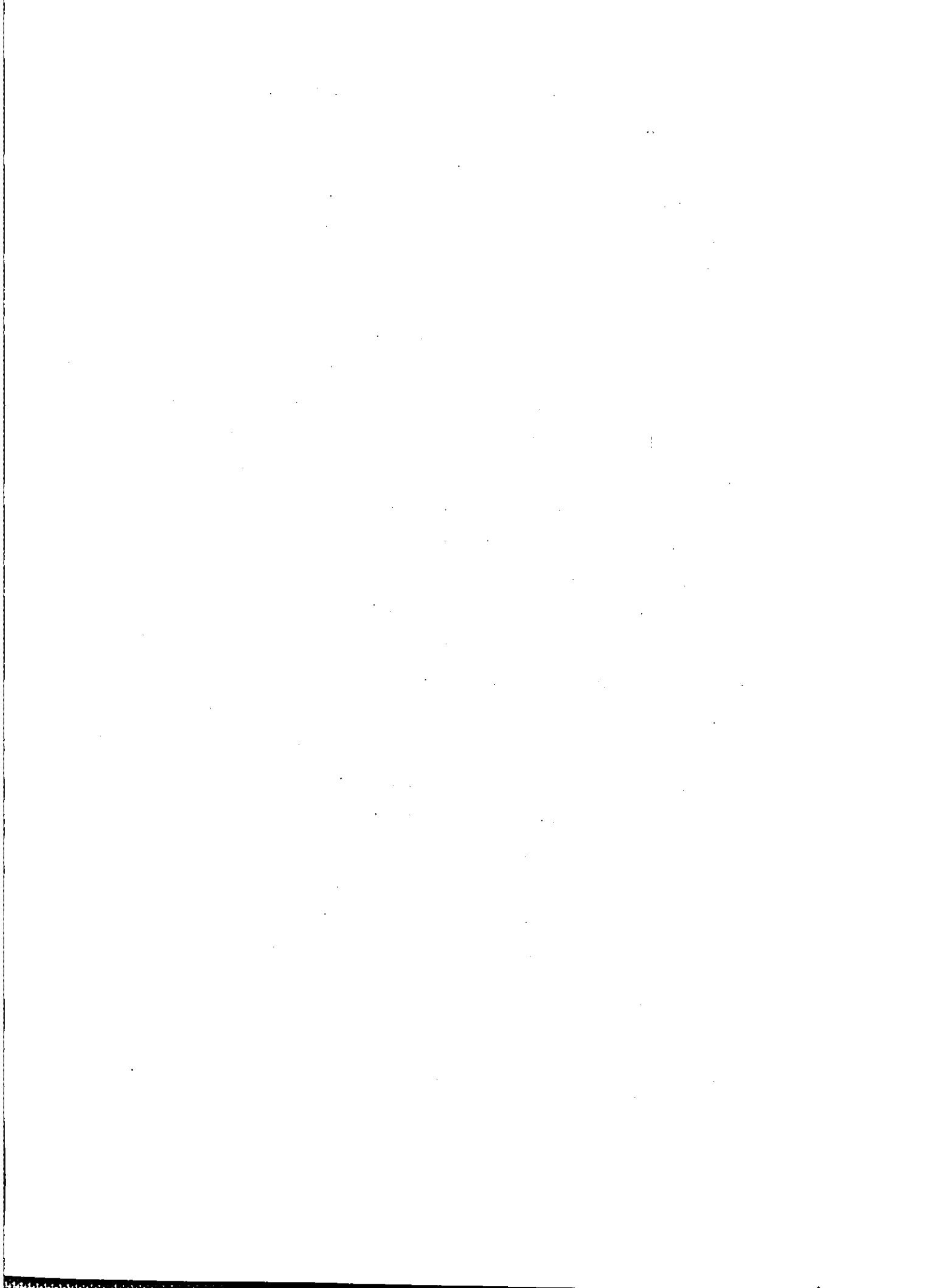
Special attention was drawn to trade liberalisation under the premise that it provokes the reallocation of resources, reduces waste, lower the prices of imported goods, and releases highly skilled workers from unproductive jobs. Nevertheless, the final aim of this trade liberalisation policy was to transform the international trade into an engine for growth. In other words, according to this approach, only the development of the external sector of the economy, it is possible to boost economic growth.¹⁸³ This trade liberalisation process was carried out by introducing rapid and generalised reductions in external tariffs. When this measure went hand in hand with an overvalued national currency and high real interest rates, the effect was an increase in the imports. In the short term, the import growth caused a sharp deterioration in the current account at macroeconomics level, while at microeconomics level, industrial production was seriously damaged.

Nevertheless, through their policies favouring financial liberalisation, the LA governments could access like never before, to abundant international funds, which were granted very permissively. A percentage of these fresh financial resources was allocated to overriding the effects of tariff dismantling on fiscal revenues, while other sums served to finance the high demand for domestic consumption. In time, this external indebtedness to private resources also increased notably, thus giving the transnational banks a more important role in connection with the financing of the domestic economy. This trend was accentuated in the 1980s, just when interest rates sharply rose.

During the sub-period 1976-1980, the evolution of external trade and financing lent support to the belief that, by following the signals of the market, the countries were actually overcoming a serious crisis while maintaining moderate growth. The regional average GDP growth, in this period, was 4.4 per cent a year, but the average inflation rate was also rising, up to 62 per cent a year. During this time, exports grew, both in volume and in value, at

¹⁸² According to Vittorio Corbo, *op. cit.*, p. 177, the principal measures adopted were: i) more realistic exchange rate; ii) elimination of most exports taxes; iii) creation of subsidised credit and tax incentives to export; iv) a reduction in the public deficit; and v) the development of a capital market.

¹⁸³ See Sebastian Edwards: "Trade Orientations, Distortions, and Growth in Developing Countries", *Journal of Development Economics*, No. 39, July 1992.



surprising rates throughout the Southern Cone countries. In parallel, the deficit on the goods-and-services trade balance, in most cases and in most years, persisted.

In August 1982, the debt crisis was finally unleashed when Mexico failed to meet its schedule debt repayment, which in total amounted to US\$80 billion. Shortly afterwards, Brazil and Argentina made similar announcements; thus, the debt amounted to approximately US\$200 billion.¹⁸⁴ It has traditionally been argued that the LA region's external debt rose rapidly because of three factors acted simultaneously: i) the dynamism of trade; ii) the deficit on the goods and services balance; and iii) the abundance of external financing. These factors were also interrelated by causal relationship which perpetuated their coexistence. The large trade deficits assumed to be temporary because they were covered by external financing at a low rate of interest in real terms at the beginning. From 1981 onwards, the LA countries must service the external debt. In doing so, an increasing proportion of their exports was being taken up to serve the debt. Although external vulnerability increased in most of the countries, it did so to a greater extent in those countries in which the new external financing method was devoted to consumption; at the same time, there was no increase in production and export capacity.

The aftermath of the external debt crisis in LA may be sum up by pointed out the following figures:

- i) per capita income fell for three consecutive years, finally stabilising in 1984 at a level of 8% below that of 1980;
- ii) the acute levels of external disequilibrium reached US\$40 billion in 1981 (US\$ 2 billion in 1984).
- iii) there was a trade deficit of US\$ 2 billion in 1981 (there was a surplus of US\$ 38 billion in 1984);
- iv) the average inflation rate tripled, reaching nearly 180% in 1984;
- v) the real wages declined by some 20% in most LA countries;
- vi) the ratio of interest payments doubled in just two years, reaching 40% in 1982.

Thus, net capital inflows virtually ground to a halt in 1983.

¹⁸⁴ See R. Hausmann and H. Reisen, *op. cit.*, p. 13, who assert that "between 1975 and 1982 Latin America's long-term foreign debt increased from \$42,5 billion to \$176. 4 billion".

Besides this, it was evident that the major social problem of LA region, that is poverty, which at one time it was said could be solved by liberalisation, not only remained unresolved, but had been aggravated. Underemployment and unemployment also had worsened.

After the 1982 crisis and until the first years of the 1990s -a period termed the "lost decade"- the region was forced to generate and to save foreign exchange very quickly, in order to tackle the external disequilibrium problem. These goals were reached through adjustment programmes, while external debt was successively and successfully renegotiated. These adjustment programmes were designed and carried out under the aegis of the IMF, basically in order to assure the collaboration of the commercial creditor banks in renegotiating the debt. Consequently, the IMF was suddenly deeply involved in the LA countries' domestic economies, thus biasing the growth model according to its own economic beliefs by cutting excessive expenditure, introducing restrictive fiscal, monetary and income measures, while encouraging devaluation and export promotion policies. The combination of debt renegotiation and adjustment programmes virtually eliminated the external disequilibrium in two years. Obviously, it was still necessary for these countries to make sacrifices in order to turn a trade deficit to a trade surplus by 40 billion, in just three years, and by reducing its imports, to serve the external debt.

5.1.4 An Appraisal

The outcome of LA crisis also saw some issues come up, which may not be assessed as completely negative aspects. Firstly, the LA countries were finally linked to the international economic stage. In trade terms, these adjustment programmes consolidated the neo-liberal economic growth model favoured those countries where it had already been applied (Southern Cone countries). In the remainder of the LA countries, this main effect was simply the trade-off for the financial backing of the international system.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for a systematic approach to data collection and the importance of using reliable sources of information.

3. The third part of the document describes the process of interpreting the data and drawing conclusions. It stresses the importance of considering all relevant factors and avoiding biases in the analysis.

4. The fourth part of the document discusses the implications of the findings and the need for further research. It suggests that the results of the study should be used to inform decision-making and to guide future research efforts.

5. The fifth part of the document provides a summary of the key findings and conclusions. It reiterates the importance of maintaining accurate records and the need for a systematic approach to data collection and analysis.

As regards the capital inflows, the LA countries continued linked to the world's financing, banking and investment centres.¹⁸⁵ Secondly, the LA countries acknowledged the fact that the liberalisation also entailed the increase in their external vulnerability. Until the 1980s, these countries were relatively immune to the slowdown in the world economy which had been happening since 1973. However, they realised that, after the debt crisis they no longer enjoy this immunity anymore. Thus, in order to face up to this vulnerability, a political mechanism was created at regional level, resulting in the Rio Group. This mechanism endorsed, and then called for, a renewed economic integration process in the region; the Common Southern Market (Mercosur) is seen as its visible outcome. Thirdly, and even more important, the debt crisis generated sincere and concrete acts of solidarity to come from the EC and its member states. Since then, the bilateral relationship has been enhanced and development cooperation increased. Over time, the EC has started to play a significant role in LA. It is worth mentioning, at this point, the outstanding support given by the EC to the democratic movements especially while military governments were installed in the Southern Cone, and its tireless concern regarding human rights violations. Not surprisingly, the EC conventional policy towards LA began to expand in this period.¹⁸⁶

5.2 CHILE: SPECIFICITY BASED ON ITS ROLE AS PIONEER AND LEADER?

5.2.1 Chile I: The Pioneer Economic Reform Programme (1974-1982)

Chile has undergone intense institutional changes since 1973. After a bloody *coup d'etat* of that year,¹⁸⁷ the most overt textbook neo-liberal experiment ever attempted in the

¹⁸⁵ See Martin Honeywell (ed.): "The Poverty Brokers: The IMF and Latin America", Latin American Bureau, London, UK, 1983.

¹⁸⁶ See *infra* Section 6.2.

¹⁸⁷ Between 1973-1989 Chile was rigidly ruled by a military government presided over by General Augusto Pinochet Ugarte. For a detailed analysis of the political, economic and institutional crises of this period, see Arturo Valenzuela: "The Breakdown of Democratic Regimes: Chile", The John Hopkins University Press, Baltimore, USA, 1978; Felipe Larrain and Patricio Meller: "The Socialist-Populist Chilean Experience: 1970-1973", in R. Dornbusch and S. Edwards (eds.) *The Macroeconomics of Populism in LA*, The University of Chicago Press, USA, 1991. Allan Angell: "Chile de Alessandri a Pinochet: En Busca de la Utopia", Editorial Andrés Bello, Santiago de Chile, 1993; Sergio Bitar: "Chile, Experiment in Democracy", Institute of the Study of Human Issue, Philadelphia, USA, 1989.

world was carried out in Chile, both in its economy and in its society.¹⁸⁸ The military government's economic team was made up of Chilean post-graduates from Chicago University, who were well backed by both their old alma-mater and the IMF.¹⁸⁹ The Chicago Boys, as they came to be known, had that their aim was to introduce an economic shift targeted at changing the ISI strategy, followed in Chile according to ECLAC postulates, into a deregulated, liberalised and outward-oriented economy. When the Chicago Boys began to run the economy a daunting economic situation was experienced: annual inflation of 600%, while public deficit amounted to 53% of the budget¹⁹⁰ (equivalent to about 30% of GDP). A sharp fall of 7,7% in agriculture and of 10% in industrial production. Furthermore, during the three years of the Unidad Popular government, more than 507 industries were either taken over or subjected to intervention by the state. By 1973, of the 17 commercial banks then in existence, 14 were in the public sector. As Larrain and Meller reported, the state managed around 85% of Chile's financial and mining sectors, 40% of the industry, 70% of transport and communications services.¹⁹¹ In addition, the state also exerted a strict price control regime on services and goods, while wages and salaries were increased by between 22 and 55%. As the exchange rate was also under state control, the black market flourished with the unofficial rate of 3,000 Escudos to the US dollar,¹⁹² contrasting drastically with the official exchange rate which, at its best rate, was fixed at 85 Escudos.

¹⁸⁸ Surprisingly, the association between the military regime and the Chicago boys did not have any roots in Chilean history before 1973. Indeed, there was no political support within the whole political arena for such economic ideas. As Juan Gabriel Valdés points out in *"Pinochet's Economist: The Chicago School in Chile"*, Cambridge University Press, UK, 1995, p. 13: "The ensemble of neo-liberal ideas that evolved in Chile after 1975 had no antecedent in the nation's public life (...) They also differed from the ideology that had characterised Chilean capitalist classes and traditional right-wing sectors up until the Allende period. Indeed, such ideas had never appeared in the economic development programs presented by political parties nor in the proposals of the main conservative economist during the thirty years prior to the Unidad Popular government. They definitively did not represent military pondering on the economy".

¹⁸⁹ This was especially the case with Milton Friedmann and Arnold Harberger. As to the IMF, see Robert Carry: *"The IMF and the Monetarism in Chile"*, in Martin Honeywell (ed.), op. cit., p. 49-69.

¹⁹⁰ At the same time, 73% of this deficit was financed with money issued by the Central Bank. See Larrain and Meller, op. cit., p. 200.

¹⁹¹ Larrain and Meller, op. cit., p. 198-200.

¹⁹² See Alvaro Bardón, Camilo Carrasco and Alvaro Vial: *"Una Década de Cambios Económicos - La Experiencia Chilena 1973-1983"*, Editorial Andrés Bello, Santiago de Chile, 1985, p. 36.

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The Chicago Boys worked out a first economic diagnosis in a document known as "El Ladrillo" (the brick), which contained the main policy orientations that they envisaged in a neo-liberal growth model.¹⁹³ Upon its conception, however, the Chicago Boys faced some "strong resistance among both entrepreneurial sectors, within the military and among their political advisers".¹⁹⁴ In 1975, once the Chicago Boys were granted wider political support, a radical policy-shift was implemented through the application of a shock treatment package known as the "Programa de Recuperación Económica". This new programme embraced profound changes for the Chilean economy, in a marked departure away from the ECLAC's proposals; it favoured privatisation, price liberalisation, the liberalisation of the domestic financial markets, fiscal reform, reform of the labour legislation, trade regime reform, and liberalisation of the capital account.¹⁹⁵ It is sufficient to focus on the last two measures in order to be aware of this shift in policy. In regard to trade regime liberalisation, it should be mentioned that it did not only entail a general reduction in levels of protection (both tariff and non-tariff barriers), but it also tended to eliminate the considerable discrimination which existed between sectors, a situation which stemmed from a differentiated tariff structure.¹⁹⁶ By 1979, Chile enjoyed a single exchange rate and a flat tariff of 10% on all imports; all non-tariff barriers had been eliminated prior to 1976.¹⁹⁷

As for the liberalisation process regarding the capital account, this development took place between 1977 and 1982 by allowing the private sector to obtain foreign credits.

¹⁹³ See Sergio de Castro *et al.*: "El Ladrillo: Bases de la Política Económica del Gobierno Militar Chileno", Centro de Estudios Públicos, Santiago de Chile, 1992.

¹⁹⁴ See Mario Drago: "The Institutional Bases of Chile's Economic Miracle: Institutions, Government Discretionary Authority (DA), and Economic Performance under Two Policy Regimes", EUI Ph. D. Thesis, Florence, 1998, p. 332. Along the same lines, see Arturo Valenzuela: "Los Militares en el Poder: La Consolidación del Poder Impersonal", in Paul Drake and Ivan Jaksic (eds.) *El Difícil Camino hacia la Democracia en Chile: 1982-1990*, Flacso, Santiago de Chile, 1993, p. 62, who asserts: "It took more than two years for the Pinochet government to decide to abandon statism or developmentalism once and for all, and to embrace neo-liberalism".

¹⁹⁵ For a detailed description of the measures adopted, see Mario Drago, *op. cit.*, pp. 332-423. See also Patricio Meller: "Adjustment and Equity in Chile", OECD, Paris, 1992, pp. 27-35.

¹⁹⁶ Before this reform on the trade regime took place, tariffs ranged from 0% for some exceptional items to a maximum of 750%. The average modal rate was 90%. Only 4% of the total tariff structure enjoyed less than 25%, while 50% of it had levies higher than 80%. Additionally, there was also a well-structured non-barriers tariffs based on quantitative restrictions, licences, import prohibitions, deposit requirement amounting to 10,000% of the CIF value of the import, a multiple exchange rate for imports, etc.

Despite this reform, credits must still be registered with the Central Bank, but this did not hamper the entrance of foreign resources into the economy.

The social costs, best illustrated by an unemployment rate, which between 1975-1980 was usually higher than 17%, and also by a decrease in the value of real wages by an average of 30% compared with those figures for 1970, all of these coupled with severe political restrictions, were not enough to prevent some commentators from talking about Chile as an 'economic miracle'. Arguably, the results of Chile's economic shift up until the 1982 crisis can be said to have been rather amazing:

- i) the inflation rate fell from more than 600% in 1973, to less than 10% in 1981;
- ii) the average annual rate of economic growth was almost 8% per annum between 1976 to 1981;
- iii) total exports -in current dollars-, increased by a factor of three to four times between 1973 and 1980-81, with a figure of US\$ 4,7 billion in 1980. Notably, non-traditional exports rose from US\$100 million in 1973 to more than US\$1,8 billion in 1980;
- iv) international reserves increased from US\$ 167 million in 1973 to US \$ 4 billion in 1980;
- v) the budget deficit showed a surplus of 4,3 and 25% in 1980 and 1981 respectively.

Despite the figures above mentioned, the 1982 debt crisis strongly bit into the Chilean economy, passing all too quickly from an economic miracle to a deep, enduring, and costly crisis. In both 1982 and 1983, GDP fell by 14,1%. There were 810 corporate bankruptcies in 1982. The effective rate of unemployment rose to over 30% in 1983. Chilean external debt, which was US\$ 5,2 billion at the end of 1977, but raced to US\$ 17,1 billion by 1982. A year later, it was around 20% larger than the countries' GDP. The annual inflation rate increased to over 20% during 1982 and 1983.

¹⁹⁷ See Patricio Meller, op. cit., p. 38.

5.2.2 CHILE II: Consolidating the Model, Reaping the Yields, and Globalising the Economy

Since 1983, two phenomena have gone hand in hand in Chilean history. That year marked a turning point in Chilean society. Politically, it marked the first year in what became a wave of social protests that extended until 1988 when democratic movements finally triumphed through a plebiscite and a democratic government was restored. Economically, 1983 was the first year of the debt crisis and also marked the start of an economic recovery as well. Indeed, since that time, the Chilean economy has once again demonstrated its ability to produce a sterling performance, matching the previous 'economic miracle' of the second half of the 1970s and the early 1980s.¹⁹⁸ This time around, economic growth started slowly during the second half of the 1980s, before consolidating in the 1990s. Up to 1997 Chile appears as one of the fastest growing world economies of the 1990-97 period, with an average GDP growth rate of 7.2 per year (5.5 in per capita terms). Indeed, in 1997 Chile completed fourteen years of sustained, uninterrupted economic growth.¹⁹⁹ Thus, far from lagging behind, Chile appears to be the strongest and most dynamic economy in LA region; actually, it is the country which has experienced the fastest economic growth in the region since the debt crisis of 1982.²⁰⁰ Since 1990, inflation has declined steadily reaching the figure of 6% in 1997, while the growth in GDP reached 7.1%. In truth, an unemployment rate of 6%, a current account deficit of US\$2,800 million, and a trade balance deficit of US\$700 million are all positive evidence of a healthy economy. In addition, the economic prospects for 1998 have only served to deepen this

¹⁹⁸ See Javier Martinez and Alvaro Díaz: "Chile the Great Transformation", The United Nations Research Institute for Social Development, R. Donnelley and Sons Co., Virginia, USA, 1996; Rachel A. Schurman: "Chile's new Entrepreneurs and the Economic Miracle: Product of Culture, Ideology, or Policy?", University of California, Berkeley, 1984; Osvaldo Sunkel: "Is the Chilean Miracle Sustainable?", *Journal of Interamerican Studies and World Affairs*, Vol. 37, No. 3, Fall 1995; and Joseph Collins and John Lear: "Chile's Free Market Miracle: A Second Look", The Institute for Food and Development Policy, Auckland, New Zealand, 1995.

¹⁹⁹ Ironically Victor Elias predicted in: "Sources of Growth - A Study of Seven Latin American Economies", International Center for Economic Growth, San Francisco, California, USA, 1992, p. 168, based on an econometric analysis, that Chile would be the LA country to experience the slowest economic growth rate during the 1990s of between 2,5 to 2,8 per cent a year.

²⁰⁰ See Ricardo French-Davis and Raúl Labán: "Desempeño y Logros Macroeconómicos en Chile", in C. Pizarro, D. Raozynski, and J. Vial (eds.) *Políticas Económicas y Sociales en el Chile Democrático*, Santiago de Chile, CIEPLAN/UNICEF, p. 49. See also the Economic Survey of Latin America and the Caribbean 1996-1997, UN- ECLAC.

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2. The second part of the report is a detailed description of the methods used in the study.

3. The third part of the report is a detailed description of the results of the study.

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6. The sixth part of the report is a detailed description of the implications of the study.

7. The seventh part of the report is a detailed description of the future research.

8. The eighth part of the report is a detailed description of the references.

9. The ninth part of the report is a detailed description of the appendix.

10. The tenth part of the report is a detailed description of the summary.

11. The eleventh part of the report is a detailed description of the conclusion.

12. The twelfth part of the report is a detailed description of the final remarks.

13. The thirteenth part of the report is a detailed description of the acknowledgments.

14. The fourteenth part of the report is a detailed description of the bibliography.

15. The fifteenth part of the report is a detailed description of the index.

positive view, predicting an inflation rate of 4,5%, GDP growth between 5 and 5,5%, a trade balance deficit of US\$1,350 million, and a current account deficit of US\$3,700 million (4% of the GDP).

At the same time, Chile has a wide and long-standing record of taking part and fostering the processes of economic integration.²⁰¹ Ever since the early 1990s, Chile has been seeking to promote international norms of trade with the aim of fostering an even faster growth on its own total exports. In only seven years, Chile had succeeded in implementing this policy by concluding commercial agreements with most of the LA countries. This policy has been carried out within the framework of the Latin American Integration Association (LAIA). Thus, Chile has concluded FTAs with Mexico,²⁰² Venezuela,²⁰³ Colombia²⁰⁴ and Ecuador.²⁰⁵ With regard to Mexico and Ecuador, both sets of parties agreed to a "zero tariff" for 97% of their tariff structure by January 1996 and January 1998 respectively. As regards Venezuela and Colombia, the FTAs with Chile embraced approximately 90% of the tariff structure. In addition, Chile has also concluded FTAs of partial extension with Bolivia,²⁰⁶ Peru²⁰⁷, and Cuba,²⁰⁸ and it is currently negotiating FTAs with Panama and with the Central American Community (Costa Rica, El Salvador, Honduras, and Guatemala).

However, the most outstanding commercial agreements concluded by Chile have been those with Mercosur and Canada. In force since 1st October 1996, Chile has concluded an association agreement with Mercosur, which implies more than only free trade under the formula 4+1. The free trade zone is to be achieved with a term of ten years, but for the more sensitive sectors, wheat and by-products, this term has been determined at 18 years. Chile prioritised the conclusion of this agreement because Mercosur represents a potential market of 200 million consumers, with a total GDP that comes around US\$800

²⁰¹ For a conceptual analysis, see Alvaro Briones: "Chile ante la Integración Latinoamericana", in Carlos Molina del Pozo (ed.) *Integración Eurolatinoamericana*, Editorial Ciudad Argentina, Buenos Aires, Argentina, 1996, p. 589.

²⁰² In force since January 1992.

²⁰³ In force since July 1993.

²⁰⁴ In force since January 1994.

²⁰⁵ In force since January 1995.

²⁰⁶ In force since July 1993.

²⁰⁷ In force since August 1998.

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thousand million, a figure which is tantamount to half of the GDP in the whole region. Besides, the commercial exchange amounts to more than US\$4,600 million, corresponding to a third of Mercosur's exchange with the remainder the LA countries. Finally, Chilean investment abroad, which amounts to US\$2,000 million, is mainly concentrated in the Mercosur countries, with 86% invested in Argentina and 12% in Brazil.

As to the FTA between Chile and Canada, in force since 5 July 1997, the major importance of it lies on the fact that it is the first FTA Chile has concluded with a G-7 country. Its political effects have been as important as its economics ones.²⁰⁸ Chile granted duty free access to the 80% of Canadian industrial exports, while the remainder of Canada products were granted a tariff of 8%, which has to be reduced to zero within a period of five years. For its part, Canada granted duty free access to 80% of Chilean exports. The remainder products will be granted duty free within a period of between two to six years. Exceptional rules also established a seventeen years period for dismantling of tariffs on agricultural products, while cultural industry and those tariff quotas regarding lactose, chicken and egg products, remained outside the scope of the FTA.

In 1990, President G. Bush announced the "Enterprise for the Americas Initiative", which in time will replace "aid" for "trade", as a cornerstone of the US policy towards the LA region. One year later, the NAFTA was concluded between Canada, US and Mexico, sending a clear political message that this initiative had been seriously taken by the US. Furthermore, at the Miami Summit of November 1994, US President Bill Clinton called for a "hemispheric partnership", and in conjunction with the President of Mexico, Ernesto Zedillo, and the Canadian Primer Minister, Jean Chretien, invited the Chilean President, Eduardo Frei, to join NAFTA. Chile would join NAFTA, immediately afterwards President Clinton were granted fast track authority by the US Congress to realise this endeavour.

The Free Trade American Agreement negotiations, covering 34 countries with the goal of achieving a free trade zone spanning Alaska and Cape Horn by 2005, have already started. Over time it will embrace a market of more than 750 million people.

²⁰⁸ Initialed on 21 August 1998.

²⁰⁹ This agreement closely resembles the North America Free Trade Agreement in its structure, it also included two side agreements, one on labour cooperation, while the other is concerned with environmental cooperation

In addition, and outside the realm of the LA region, Chile is also a full-member of the Asian Pacific Economic Cooperation (APEC), the economic forum in which 18 countries from the Pacific basin participate, but only Chile from South America. This forum agreed, through the Bogor Declaration that was delivered in 1994, to achieve a free trade zone²¹⁰ prior to the year 2010 for developed economies and by 2020 for those countries with less developed economies.

5.2.3 An Appraisal

By analysing Chile's economic shift during the last twenty years, the conclusion that clearly arises is that this change allowed Chile to appear in the international economic arena of the 1990s, as a remarkable country in the LA region. This economic regional leadership matched with its political transition to a democratic regime, whose new legitimate authorities continued enhancing the external sectors of Chile's economy, as was performed under the military regime. Chile political and economic model started to be resembled by its neighbours. Chile, the traditionally poor and isolated country of LA, was endowed by the circumstances with economic and political international prestige. This leadership encouraged Chile to formulate an economic engagement policy in the LA region, through concluding FTAs. In the mid 1990s, Chile was admittedly the most integrated country of the LA region, with a remarkable free trade net that linked Chile with more than 80% of the LA region population, that is, a figure close to 430 million potential consumers.

As to Europe, the strong linkages forged during the political and economic developments of the 1980s and the 1990s, were given the opportunity to grow up and evolve towards an EC association policy. Chile was not originally an eligible country as regards this association policy, then the importance to explain why it was finally including in it. This thesis holds that if there was an Association Policy towards Chile in the 1990s, that was due to the outstanding changes the Chilean population was able to produce twenty years ago. This variable is often disregarded in the analysis; therefore, this thesis has

²¹⁰ It is expected that this zone should embrace the free trade of goods and services, as well as the flows of capital; Chile committed itself to reaching the free trade objectives that have been outlined prior to 2010.

availed itself to survey it, and finally ranked it top level considering it as a direct cause for Chile to be eligible to the EC Association policy towards the LA region. This conclusion is backed noting that Chile's economic record could not be comparable with the LA's richest countries, largely Argentina, Brazil, and Mexico.

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6. EU-Latin American Relations: Four Stages.

Latin America has a European heritage stretching back many hundreds of years. Its languages and religions reflect the historic process of colonisation mainly carried out by Spain and Portugal. In addition, the LA region also experienced further waves of European immigration and not only from the two Iberian countries. This influx of immigrants left an enduring legacy of European culture and ideology throughout the region that still persisted long after the former colonies had become independent states. The European powers, particularly Britain and Germany, continued to play a major economic role in South America from the beginning of this present century. However, Germany's successive defeats and Britain's drastically reduced circumstances in 1945, left only the USA as the dominant economic and political influence in the region in the following post-war period.

Over time, the EC has consolidated its integration model, while the LA countries have moved closer to the financing and trade operating in the post-war era. The first step towards the formalisation of the EU's political relationship with the LA region was taken by inaugurating the first Delegation of the High Authority (Commission) for the region, in Chile, in 1964.²¹¹ Despite the fact that formal relations between the EU and the LA region are now long-standing, there has been little progress in exploiting their full potential. Throughout this century Europe has had a diminishing role in the region, largely because of the US hegemony and the leverage that it has exercised in the Western Hemisphere, but also because of lack of political will in Europe to increase its commercial links with this region.

However, a number of different circumstances have also occurred in the last twenty years, both within and outside of the LA region, which have made the EU rethink its role in this zone. The most visible result of this change is the envisaged EC association with some countries of LA. By exploring the different stages that have been experienced in their bilateral relations, a better and useful understanding of this change can be presented. From this survey it appears that the traditional bilateral relationship has mainly featured political

²¹¹ After *coup d'etat* of 1973, this body moved to Caracas, Venezuela.

and aid concerns on the EU's part; while disregarded commercial objectives have ranked as the most important concern of the LA countries. The EC association policy constitutes a break in the EC-LA's historical relationship. This change is explained by the economic shift that has taken place in the region during the last twenty years, a development which was the main subject matter of the previous sections (supra sections 4 and 5). When the LA's economic profile was rather low, there was no EC intention to boost the stance of the latter by increasing the commercial exchanges. In contrast, when the region began to be viewed as an emergent sub-continent, the EC changed its policy pattern by proposing what would eventually become a Political and Economic Association. This new policy also marked a departure from the traditional policy, which was based on the universal principle, because it was only addressed to some LA countries, then very selective.

6.1 FISRT STAGE: 1964-1976 A DEVELOPING AWARENESS

The first stage in relations between the EC and the LA region may be defined as a preliminary level in their mutual knowledge. This period opened with the Martino Report of 24 November 1964 on the relationship between the EEC and Latin America²¹² for the EP, ending on 15 March 1976 when the EC devised the first finance and technical cooperation programme for the LA region.

Surprisingly, the outlines of this period trustworthy portray what became, over time, the main features and issues in the debate about the substance of the EU-LA relationship. Largely, the debate has focused on the scope of this relationship. Thus, while the EP and the High Authority (Commission) maintained a comprehensive approach towards LA, as a whole, envisaging a political as well as an economic relationship, the Council was reluctant to support such an approach.²¹³ Instead of this, it made its position clear by stating that the political relationship should prevail over any economic issues. Furthermore, in the Council's opinion, the LA's problems allowed a preferential action to be taken by and from

²¹² The text can be consulted in: "Europa-América Latina: 20 años de Documentos Oficiales 1976-1996", IRELA, Madrid, Spain, 1996, pp. 5-30.

²¹³ For instance, the Council never approved the Community Action Programme regarding the LA region, which proposed by the High Authority (Commission) in 1962, Document CEE/I/COM (62) 35, Rev. 3.

the member states, without necessity for the Community *qualitate qua* to take the role of a coordinator.²¹⁴

The Martino Report contradicted the Council's opinion by firstly highlighting that the "economics aspects are the unique truly important for LA countries". In addition, it deemed as unsuitable any individual or singular action taken by a member state in considering the magnitude of the problems faced. The Martino Report assessed the Community's activity in LA as the only means in which it was capable of yielding gains.²¹⁵ Finally, it called into question the Council's bias towards developing only "political approaches" by stating that the distinction between politic and economic issues had already been overcome and, indeed, that the political problems in the region were mainly caused by economic stagnation.²¹⁶ The Report concluded that the LA continent actually had a huge economic potential that needed to be fostered, and that the boldest hopes deserved attention and support.

In commercial terms, the Report recognised that products from the template zone had a pre-eminent place in any bilateral exchanges. It also admitted that these exchanges might be undermined by the Association Agreement concluded with the former colonies. In an attempt to solve this problem, it proposed to increase the EC's internal demand for LA products, to establish an EC programme geared towards the LA region, and to work out a plan at the multilateral level within the GATT fora.²¹⁷

Despite the opinions of the EP and the High Authority (Commission), the Council approved the continuance of relations with the LA region at a political level only. As a result of this decision, the LA region ranked in the last place in the EC's relations with the rest world, in 1973.²¹⁸ The EC's priorities, at that stage, were: i) the non-EC European countries; ii) the Mediterranean countries; iii) the Africa and middle-East countries; iv) the

²¹⁴ See point N. 28 of Martino Report.

²¹⁵ See point N. 29 of Martino Report.

²¹⁶ See point N. 30 of Martino Report.

²¹⁷ See points N. 51 See point of Martino Report.

²¹⁸ See Aida Lerman Alperstein: "Relaciones Políticas de la CE y América Latina", in Carlos Otto Vázquez (ed.) *América Latina y México ante la Unión Europea de 1992*, Benemérita Universidad Autónoma de Puebla and Fundación Friedrich Ebert, Mexico 1992, p. 243.

USA and OECD countries; v) the URSS and the CEECs; vi) China and Asiatic countries; and, finally vii) the LA countries.

Nonetheless, this LA's low profile did not prevent the EC from concluding the first generation Cooperation Agreements with Argentina on 8 November 1971, Uruguay on 6 November 1973, Brazil on 19 December 1973, and Mexico on 5 July 1975. These agreements opened a conventional policy towards the LA region, although they were mainly addressed to manage development cooperation granted by Europe.

6.2 SECOND STAGE: 1976-1990 DEEPENING THE TIES

This second period was inaugurated with the creation, on 15 March 1976, of the first financial and technical cooperation programme aimed at the non-developed Asiatic and LA countries. This programme entailed the formalisation at the EC level of the economic cooperation that was taking place. This programme was later supported by Cooperation Agreements concluded with the Andean Pact countries²¹⁹ - Bolivia, Colombia, Ecuador, Peru and Venezuela - Central American countries²²⁰ - Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama - and Brazil,²²¹ giving rise to the so-called second generation Cooperation Agreements.

This era was also shaped by an intense period of political and economic developments, which made the EC become fully involved in LA. Regarding the political process, the installation of military governments, mainly in the Southern cone -Argentina, Chile, and Uruguay - forced an exodus of thousands of people who then looked for asylum or some other form of humanitarian aid. Most of these persons found, as their new host country, an EC member state in which to live, and many of them were strongly engaged in the domestic political parties of these countries, a factor which was decisive in exerting political pressure upon the LA military governments.²²²

²¹⁹ OJ L 153/1984.

²²⁰ OJ L 172/1986.

²²¹ OJ L 281/1982.

²²² Quoted by Aida Lerman, op. cit., p. 245, Piere Shori, a Swedish politician, admitted the need to create and develop an asylum and refugee mechanism for contributing to the establishment, for first time, of systems of cooperation between European Social Democratic Parties and similar Latin America political parties. This view

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On the other hand, the political unrest in Central America led the US to implement a strong-armed policy towards Nicaragua and El Salvador. This policy included the financing of some guerrilla groups, economic embargoes, and the threat of military intervention. The LA countries, in an attempt to prevent the US from intervening directly in the Central American conflict, created the Contadora Group in order to search for a negotiated solution without foreign military intervention. The EC strongly supported the Contadora Group²²³ - Venezuela, Colombia, Mexico and Panama - thus challenging US hegemony in the region.²²⁴ Furthermore, a political dialogue with Central America countries was formally instituted in 1984 through the so-called San José dialogue.

It may be asserted that the EC managed to get involved in the politics of the Central and Southern Cone regions, thus gaining sympathy from LA countries because of its peace-making role and also as a defender of human rights and democratic values.²²⁵ This role was successfully instituted by the EC at an historic moment, when a heavy burden of economic and politic problems, on a scale never previous faced by the LA governments, overlapped in just a couple of years. In foreign policy terms, the Central American conflict served as an opportunity for the EC's policy of European Political Cooperation (EPC) to prove its substance. Through this learning process, France and Germany were convinced of the need for Europe to be more active in Central America. Thus, their combined forces ensured that there was an active and substantial European policy "even though other member states had doubts and qualms - especially when the course driven by EPC met with objections from the United States".²²⁶

is expanded upon by Esperanza Durán: "European Interests in Latin America", The Royal Institute for International Affairs", Routledge and Kegan Paul Ltd., London, UK, p.89, who says that, in the case of Germany, political parties such as "the Social Democratic, Christian Democratic and Liberal parties are convinced that they have their ideological counterparts there [in LA], more than in any other area of the Third world (...) The Konrad Adenauer Foundation devotes 50 per cent of its funds to Latin America".

²²³ The Contadora Group was formed in 1983 by the Foreign Ministers of the aforementioned countries, having met in the island of Contadora in the Gulf of Panama.

²²⁴ In words of Esperanza Durán, *op. cit.*, p. 49: "The European Community has therefore sought to adopt an independent policy in Central America to help bring about a negotiated solution that would diminish the possibility of a US intervention".

²²⁵ The Esquipulas Agreement signed on 7 August 1987, by which a negotiated solution was achieved in Central America, expressly recognised the EC contribution to the peace process.

²²⁶ See Simon Nuttal: "Two Decades of EPC Performance", in Elfriede Regelsberger (ed.) *Foreign Policy of the European Union: From EPC to CFSP and Beyond*, Lynne Rienns Publisher, London, UK, 1997, p. 32.

In this context, it should be also noted that, despite the Malvinas/Falklands War, the Commission impetus regarding LA continued by fostering an interregional political dialogue with Contadora Group in Central America.²²⁷ A similar dialogue also took off with the most important political cooperation regional mechanism, the Rio Group²²⁸ Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela.

Economically, the LA debt crisis reinforced external trade patterns; indeed, EC-LA bilateral commerce was seriously affected. The figures show that, throughout the 1970s and until the first years of the 1980s, in relation to total EU exports, LA's share fell from 3.5% to 1.9%, while the LA's share in total EU imports fell from 4.2% to 2.6%.²²⁹ This trend was broken in the mid-1980s, but the surplus mainly stemmed from a decrease in EC exports rather than an increase of LA exports. EC exports to LA fell by 42% between 1981 and 1983. From the LA's perspective, the EC has been the final destination for an average of 25% of its total exports and, in turn, imports from the EC amounted to a similar figure in the LA's total imports. In contrast, development cooperation increased during this period, but it was mainly aimed at supporting the peace process in Central America and the democratic opposition to military regimes in the Southern Cone.

Finally, it should be noted that, during this period, EU-LA relations were notably reinforced by the adherence of Portugal and Spain to the EC.²³⁰ These two new members were capable of maintaining the cultural and economic links with LA countries, as well as enhancing the EC's policy towards this region.

²²⁷ Since 1984 the Commission organised periodic meeting at Ministerial level; for instance, Costa Rica (1984); Luxembourg (1985); Guatemala (1987); Germany (1988); Honduras (1989); Ireland (1990) and Nicaragua (1991), etc.

²²⁸ Recently Costa Rica and Jamaica have been invited as representatives of Central and the Caribbean, respectively. Furthermore, Rio Group has become the legitimate EU counterpart in the LA region regarding to economic and political issues. There is an envisaged EU-Rio Group Summit Meeting to be held in Brazil, in June 1999, where the Head of States and Governments of both sides are suppose to agree the new political and economic bilateral agenda for the new century.

²²⁹ See Jaime Estay Reyno: "Las Relaciones Económicas entre Europa y América Latina: Problemas y Principales Tendencias", in *América Latina y México ante la Unión Europea de 1992*, op. cit., p. 143.

²³⁰ See, for instance, Christopher Piening: "Global Europe: The European Union in the World Affairs", Lynne Rienner, London, UK, p. 121, who asserts that this reorientation of the EC's towards LA was simply encouraged by Spain and Portugal after they joined the EC.

6.3 THIRD STAGE: 1990-1995 CONSOLIDATION PERIOD

During this third period, both the EC and the LA region reaped the fruits of the intense links forged that they forged in the previous decade. Political channels were opened and there was a wide acknowledgement of each other individuality and needs on both sides. The EU's policy towards the LA had two main characteristics in this consolidation period. Firstly, there was the intention to maintain the same political level of interaction during the 1980s by formalising a political dialogue on an interregional basis. Thus, it was agreed that a ministerial summit must be held annually, the first of which took place in Luxembourg between 26 and 27 April 1993. Secondly, a new wave of agreements was concluded with almost all the LA countries. These agreements, termed "Third Generation Cooperation Agreements", bore out the EC's conventional policy started in the 1970s with some LA countries (at the end of the first stage). But, above all, this conventional policy was intended as a means to end once and for all the blatant imbalance between political cooperation and development cooperation policies.²³¹

The importance of these agreements focuses on the idea that, through them, political and development cooperation would henceforth be on an equal foot. In this context, the Commission Guidelines for Cooperation with the developing countries of Latin America and Asia,²³² should be assessed as they set out the basis for which this new period could widen its scope.

The Rome Declaration, signed on 20 December 1990 by the Foreign Ministers of the Rio Group's member states and their counterparts from the EC, was also aimed at achieving this goal. It contains a wide programme proposing and promoting joint consultation and cooperation.²³³ At the same time, it recognised that the appearance of the CEECs, as a focus of the EC's interest, could hamper the future development of political and development cooperation that had then been already reached. Thus, the Rome Declaration had the intention to formalise and to consolidate the relationships between the

²³¹ See Cristián Freres, Alberto van Klaveren, and Guadalupe Ruiz-Giménez: "Europa y América Latina: La Búsqueda de Nuevas Formas de Cooperación", *Síntesis*, No. 18, September-December, 1992, p. 112.

²³² Document COM (90) 176 final of 11 June 1990.

²³³ The EC committed ECU 925 million for the cooperation with LA countries for the period 1990-1994.

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EU and LA countries on a multilateral-bilateral basis. It is also tempting to remark that it was a political response to more than forty years of misreading, as well.

6.4 FOURTH STAGE: 1995 - THE BIRTH OF THE ASSOCIATION POLICY

The fourth stage in the EU-LA relationship was opened up by the Commission Communication entitled "The European Union and Latin America, the Present Situation and Prospects for a Closer Partnership: 1996-2000".²³⁴ Through this Communication, the Commission explored the likelihood of a partnership between LA and the EU, noting that the LA had become an "emerging" regional economy in which the EU must also have a presence.

The Communication highlighted the common historical and cultural variables, by saying that the LA's cultural identity is heavily imbued with the values which shaped Europe's character and history. Furthermore, it positively assessed the political climate and economic growth that was prevailing in the region, both of which features make the LA countries a dynamic new focus for trade and investment. It points out that, with bilateral trade amounting around EC 45 billion in 1993, this zone had become the world's fastest growing continental market for Europe.²³⁵ Finally, it recognised that the EC's policy had mostly contributed to the region through a development cooperation policy carried out to relieve social problems, to safeguard the transition to democracy and institutional reorganisation, and to foster economic development.

Notwithstanding, one of the most important contributions of this document was that, for first time, the Commission stressed the highly heterogeneous nature of the subcontinent. Accordingly, it called for the Union *to vary* its approach to the region by tailoring it to national and regional circumstances. The EU, it added, should require that its own policy meet the needs of the region's heterogeneity. Through these new statements, the Commission appeared to have definitively backed the Council's political position towards the LA region, a position which had been expressed in successive European Councils -

²³⁴ Document COM (95) 495 final of 23 October 1995.

²³⁵ Exports rose by 41 per cent over the period 1990 and 1993.

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Corfú, Essen and Cannes, favouring closer relations with Mercosur, Mexico and Chile. This trend of targeting specific LA countries, in order to accord them privileged relations, also marked a new departure in EC policy, in so far as EU-LA relationship up to that stage had only been put in practice from a global perspective (universal principle).

This global perspective was reflected in the political dialogue, which was developed at San José, as well as at Rio Group level. Yet, the Cooperation Agreements of third generation were concluded in a way which encompassed all of the LA countries, with the exception of Cuba.²³⁶ Therefore, the EC's policy had basically sought to embrace politically and conventionally all of the LA countries. However, as this Communication made apparent, it was suggested that such a policy was no longer valid in deepening bilateral links.²³⁷ At that time, it was clear to the policy makers that, firstly, in the EC's policy towards the LA region a yardstick would have to be introduced, by which it would be possible to differentiate the LA countries. This yardstick was mainly based upon the individual countries' economic and political profile.²³⁸ Secondly, the policy makers were also aware that they could hardly return to the traditional "Cooperation Agreement" concept, because three generations of the same policy would only disturb the LA countries further and impair the EC's credibility.

Clearly, the only proposal, which might be aimed successfully at making headway in the relationship, was to put forward commercial objectives as the central point to be achieved in the new envisaged stage. Nevertheless, to shift from a cooperation policy, which was essentially based upon cooperation onto a liberalisation of the exchanges policy

²³⁶ The position of Cuba in LA remains complex. Long since the only communist country in the hemisphere, it is also remains today the only undemocratic state in the region. The EU-Cuba talks to negotiate a Cooperation Agreement began in 1995, but broke down in 1996. The major sticking point was the Havana's unwillingness to accept a democratic clause in that agreement.

²³⁷ Manuel Marin, European Commission's vice-president, explains the new approach in "L'Unione europea e l'America latina", in *Relazioni Internazionali*, No. 44, May-June 1998, p. 8, by saying: "Globalità e specificità: due criteri ai quali aggiungerei quello dell'intensità, che traduce la volontà dell'Unione europea di intensificare al massimo le relazioni di cooperazione economica e politica con un'area della terra che non solo ha dimostrato, nell'ultimo decennio, una grande maturità, ma che pure è pronta ad affrontare, in modo sincero, la sfida della competitività internazionale, che sembra essere sempre più chiaramente il principio motore della transizione verso il nuovo secolo".

²³⁸ This conditionality was not made public, as was the case of the CEECs (see *infra* quotations 71 and 89). However, the Commission's Communication indicates that the same aspects were taken into account when searching for eligible LA countries.

would have hardly been approved by the Council, especially when taking the then deepening and widening debate into account. In addition, the agriculture issues, which flows clearly out every time the EC deals with the LA region, were a real obstacle for the Council, bearing in mind the CAP rules. Therefore, the dilemma that the EC faced was whether it should give up its initiatives towards the LA region, thus allowing the US's free trade initiative to flourish without the EC's presence, or whether it would have to devise an attractive mechanism to meet the LA's commercial expectations. The Framework Cooperation Agreements (FCA) represent this outcome. They were designed to cope with the LA's interest in deepening commercial links by liberalising the exchanges, but paradoxically it delayed such a goal to some date in the future that was not fixed by the parties.²³⁹ Not surprisingly, the FCAs were almost identical to both the EAs and the EMAs, as legal instruments, but with the characteristic that are completely devoid of any commercial content.

The analysis of the EU-LA commercial link also backed the proposal for an Association envisaging the liberalisation of the exchanges.²⁴⁰ This variable pointed out that the growth of the EU exports to LA region, there flow some interesting findings. Firstly, the growth of EU exports to LA (104%) has outpaced total EU export growth (36%), throughout this decade. However, LA still accounts for only 2,1% of the EU's total exports and only 9,9% of its exports to developing countries. Secondly, by contrast, the US share of the LA market rose from 38% to 41%, and that of the NICs and Japan increased from 8% to 12%. The EU has therefore seen a decline in its market share in LA, from 21% to 17% between 1990 and 1996.

As LA's second largest trade partner, Europe's relative weight remains significant: in 1996, total trade amounted to over US\$83 billion. Nevertheless, since 1990 the EU's importance for LA exports has diminished as intra-regional and intra-hemisphere trade have outpaced biregional trade. Between 1990 and 1996, LA exports to the EU, as a

²³⁹ The EU-LA summit to be held in 1999, in Brazil, has the express aim to enhance the political and economic bilateral relationship. There are some hopes in the LA side that this meeting will draw a new line from where to make a substantial headway in the commercial field.

²⁴⁰ This economic analysis is made having taken the following sources into account: ECLAC statistics, Eurostat, World Bank, and data from the Ministry of Foreign Affairs of Chile.

percentage of the region's total exports, fell 24% to 14%. The US share of LA exports simultaneously from 38% to 49%.

In assessing the political and economic profile of those countries eligible for the EC's association policy towards LA, immediately the question arose as to whether or not Chile deserved to be encompassed by its development. Arguably, Mexico and Mercosur are the most powerful economies in the whole LA region. The former became a contracting party to the GATT in 1986; it was also a founder member of the European Bank for Reconstruction and Development and joined the OECD in 1994. In addition, it also enhanced its regional economic integration status by signing a series of FTAs, most notably that with NAFTA, which in itself accounts for 20% of the world's trade. Mexico's integration policy was also backed by its conclusion of an FTA with the so-called Group of Three (Mexico, Colombia and Venezuela), an economic area that which accounts for 35% of total GDP in LA,²⁴¹ and, indeed, by the significant role it is playing in the APEC forum. Besides which, EU exports to Mexico were adversely affected by the entry into force of NAFTA and were further undermined by the FTAs, which followed when Mexico concluded then with other LA countries.²⁴² Finally, it should also be noted that Mexico is the largest Spanish speaking country in the world and that it also has the third largest GDP among developing countries. The conclusion also noted above was that the EC could not afford to leave such an important country aside from its new association policy.

With regard to Mercosur, it is sufficient to underscore two aspects. Firstly, it has quickly become the largest LA market with a population of 200 million people in 1994 (79% Brazil, 17% Argentina, while Paraguay and Uruguay scarcely make up 4%), and a GDP of US\$ 800 billion.²⁴³ In addition, Mercosur is the recipient of 70% of the EU's FDI²⁴⁴

²⁴¹ See Communication "Towards Closer Relations between the European Union and Mexico", COM (95) 03 final, 8 February 1995, 7.

²⁴² See the Commission Staff Working Paper entitled "A Free Trade Agreement between the European Union and Mexico", European Commission, April 1996, p. 1, where it is stated that "In the first eight months of 1995, exports of EU goods to Mexico fell by 30% compared to the same period in 1994. In contrast, US exports to Mexico for the first ten months of 1995 fell by only 1,4%".

²⁴³ See Samuel Pinheiro Guimarães: "Aspectos Económicos del Mercosur", in Carlos Molina del Pozo (ed.) *Integración Euro-Latinoamericana*, Ediciones Ciudad Argentina, Buenos Aires, Argentina, 1996, p. 447, who points out the blatant economic asymmetry among the Mercosur countries. This asymmetry is explained by the fact Brazil is responsible for 68% of the Mercosur's GDP, Argentina for 29%, and Paraguay and Uruguay for the remaining 3%.

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and also accounts for fifteen cities with population of more than one million inhabitants. Mercosur is Europe's primary export destination in LA, taking over 51% of European exports to the region. Total trade between the two groups has grown by over 92% since 1990.

The question as to why Chile has also been included in the EC's association policy towards the LA region, despite its low economic profile when compared to Mexico and Mercosur, is more problematic, but an answer has been attempted in the previous sections.²⁴⁵ In summary, it is possible to say that Chile, more than any other country, appears to play the role of a regional economic leader. This aspect, added to its political stability and to the sympathy its name provokes throughout Europe - mainly because of the links forged during the Pinochet dictatorship - was well viewed as the principal causes for its inclusion in the EC's association policy.

In the end, the Association policy towards the LA region materialised its first stage when concluding agreements with Mercosur (December 15 1995), Chile (June 21 1996), and Mexico (December 8 1997).

In conclusion, it is tempting to remark with a degree of disbelief, that it took the EC almost thirty-three years, that is ever since the Martino Report of 1962, to make reference to any specific commercial objectives in an agreement which it concluded with any LA country. It should be, however, said that it might take even more before those objectives can be agreed upon, and later again before they are put into practice.

²⁴⁴ See Eduardo Cuenca García: "Las Relaciones Económicas entre Europa y América Latina", in Carlos Molina del Pozo (ed.) *Integración Euro-Latinoamericana*, op. cit., p. 722, see, in addition, Gladys Benegas Cristaldo: "In Search of a Common Market in the Southern Cone of Latin America: Mercosur Trade Creation, Trade Diversion and Policy Implications", Ph. D. Thesis, University of Pittsburgh, 1992.

²⁴⁵ See supra 5.2.

7. THE EC ASSOCIATION POLICY TOWARDS CHILE

7.1 Genesis

Contrary to what might have been expected, Chile's participation in the EC's association policy towards the LA region was not initially foreseen as possible. The first document which referred to this issue, the conclusions of the Corfú European Council of June 1994, only called on the Commission to put proposals to the Council aimed at strengthening relations with Mercosur and Mexico. In spite of the fact that no reference was made to Chile, a process was initiated. The Chilean Ministry of Foreign Affairs worked out a document known as the 'non-paper' of 19 July 1994, which was mainly targeted at reverting the situation by convincing the Commission and the Council to include Chile in such a policy.²⁴⁶ The non-paper underlined Chile's historically close links with the EC because of cultural, political and economic similarities. Accordingly, it was made clear that the Chilean government's intention was to improve its bilateral relations with the EU by stepping outside the Cooperation Agreement dating from 1990, and by aiming for an association agreement which would involve the creation of a free trade area between the EU and Chile. The non-paper was submitted to all of the Community's institutions highest authorities and distributed by the various Chilean Embassies in Europe to several European foreign affairs ministries of the EU member states.

The effects of the non-paper at the EC level were noticeable in the short term. Firstly, the "basic paper" of 31 October 1994 on the EU's relations with LA and Caribbean states, which was worked out by the German Presidency of the Council, made some room in which to widen the envisaged association policy to other countries. At least, it was interpreted as such by the Chilean officials in that section where the EC's readiness was

²⁴⁶ According to Mariano Fernández, currently Deputy Foreign Affairs Minister, this non-paper was worked out by the Ministry of Foreign Affairs of Chile, as a response to the traditional Chilean presidential speech delivered to the Chilean Parliament, an event which takes place every 21 May. In 1994, President Eduardo Frei explained that the quest for an association scheme with the EU, either bilaterally or in conjunction with other LA countries, was a priority of the Chilean Foreign Policy. See also Mariano Fernández: "Estado Actual de las Relaciones entre Chile y la Unión Europea", in *Relaciones con la Unión Europea: Una Visión Latinoamericana*, Ediciones del Centro Latino Americano para las Relaciones con Europa, Santiago de Chile, 1995, p. 48.

THE HISTORY OF THE UNITED STATES

1776

The first of the thirteen original states to declare their independence from Great Britain was the State of Virginia. On July 4, 1776, the Continental Congress adopted the Declaration of Independence, which was signed by representatives from twelve of the thirteen colonies. The document declared that the colonies were no longer part of the British Empire and that they were now free and independent states. The signing of the Declaration of Independence was a pivotal moment in American history, marking the birth of the United States as a sovereign nation.

The Declaration of Independence was a bold statement of the colonies' desire for self-governance. It was a document that declared the colonies' right to life, liberty, and the pursuit of happiness. It was a document that declared the colonies' right to be free from the tyranny of the British monarchy. It was a document that declared the colonies' right to be free from the oppression of the British government. It was a document that declared the colonies' right to be free from the control of the British Empire.

The Declaration of Independence was a document that was signed by representatives from twelve of the thirteen colonies. It was a document that was signed by men who were brave and who were willing to risk their lives for the cause of independence. It was a document that was signed by men who were men of honor and who were men of integrity. It was a document that was signed by men who were men of courage and who were men of faith.

The Declaration of Independence was a document that was signed by men who were men of vision and who were men of leadership. It was a document that was signed by men who were men of action and who were men of determination. It was a document that was signed by men who were men of conviction and who were men of conviction. It was a document that was signed by men who were men of conviction and who were men of conviction.

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outlined to start talks with a view to more far-reaching agreements, better adapted to the LA partners' economic potentials and to the emergence of forms of regional integration. By the end of 1994, the Chilean non-paper had attained a high level of notice in Europe and the Council of Foreign Ministers (General Affairs) duly approved a resolution on 28 November, in which it noted with some satisfaction, Chile's interest in strengthening its bilateral relation with the EU.²⁴⁷ In addition, the Council decided to review the EU's relations with Chile during the first quarter of 1995 on the basis of an evaluation report to be issued by the Commission.

Chilean efforts to be included in the EC's association policy had paid off by the time the Essen European Council of December 1994 was convened. At that point, the member states urged the Commission and the Council "to put ideas on the future form of treaty relations with Mexico and on the extension of relations with Chile into *concrete form*" (emphasis added). Consequently, this statement went on to point out that Chile had successfully managed to be considered as an eligible and legitimate LA country for benefiting from the association policy envisaged by the EC. The response of this Commission to the request from the Essen European Council was the Communication on the "Strengthening of Relations between the European Union and Chile".²⁴⁸ This document firmly buttressed the option which Chile now had as to whether it wanted to be included as an eligible LA country in the EC's association policy.

In 1995, the Chilean initiative was also endorsed by the Spanish Presidency of the Council, which specifically mentioned Chile in the framework of its projected programme for the EU's external relations. Accordingly, on 17 July 1995, the Council of Foreign Ministers (General Affairs) approved a Decision on the strategic options towards Chile. The text of this Decision referred to a new agreement whose final objective was to be

²⁴⁷ Mariano Fernández, op. cit., p. 50, stated that this decision was made taking four elements into account: i) the cultural, political and economic links that historically exist between Chile and Europe; ii) the recognition that Chile is an important state in the region, a pioneer of economic reforms and successful example of the democratic transition process in the LA region; iii) the Chilean commitment to deepening the interregional dialogue between LA region and the EU; and iv) the Chile's interest and impetus in strengthening bilateral links with the EU.

²⁴⁸ Communication on Strengthening of Relations between the European Union and Chile, COM (95) 232 final, of 31.05.95.

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"political and economic association" based on the highest possible levels of political dialogue.

Finally, the negotiating directives to conclude a Framework Cooperation Agreement (FCA) between the EU and its member states and Chile, were approved by the Council of Foreign Affairs (General Affairs) on 30 January 1996. Following three rounds of negotiations, this FCA, in preparation for the eventual establishment of a political and economic association between the EC and its member states, of the one part, and the Republic of Chile, of the other part, was signed in Florence, in 21 June 1996.

7.2 Analysis of the Framework Cooperation Agreement of 1996

7.2.1 Legal Basis

The FCA was legally based on Art. 113, 130Y, and 130U, in conjunction with the first sentence of Art. 228(2), and the subparagraph of paragraph 3, all provisions of the EC Treaty.

Art. 113, which provides for the CCP, has normally been used as the legal basis of this category of agreements, in as long as commercial issues may be referred to in the text of the agreement.

It should be noted that in case 268/94,²⁴⁹ the Portuguese Government claimed that Art. 113 was redundant as a legal basis, since Art. 130Y constituted a sufficient basis for an agreement concerned mainly on development cooperation. Unfortunately, the Court did not rule this controversy satisfactory. It held that the Portuguese argument was "purely in purport", so that, even in the case it had been correctly submitted "the conclusion of the agreement would in any event require the Council to act by a qualified majority and the Parliament to be consulted in accordance with the first part of Art. 228(2) and the first subparagraph of Art. 228(3)".²⁵⁰ In so ruling, the Court avoided to provide Art. 113 with a legal sense in the conclusion of this category of agreements. In other words, if Art. 130Y is sufficient to conclude an agreement on development cooperation, what is the exact role of

²⁴⁹ Case C-268, Republic of Portugal v. Council, 1994, ECR I-6177.

²⁵⁰ See paragraph 79 of the judgement.





Art. 113 in this matter. In this context, it seems that Art.113 provides for those issues that, in the implementation of the agreement, could fall within the scope of Art.113.

The reference to Art. 130Y and 130U are a new legal element, however, which are intended to provide the legal basis for the development cooperation content in these agreements. It should be noted that those provisions relating expressly to the development cooperation policy were inserted in the EC Treaty by the TEU. Until the TEU came into force, agreements with a development cooperation content could only be based on the Art. 113-235 formula,²⁵¹ which implied an express recognition that there was a lack of competence for the EC to conclude these matters in international agreements. The reference to Art. 228 only signifies that the Council decides on conclusion of an agreement by qualified majority, having already consulted the Parliament. The assent of the parliament is required if the agreement falls into one of the categories specified in the second sentence of Art. 228 (2).

7.2.2 Mixity in FCA.

Mixity²⁵² is a legal phenomenon that principally relates to the power conferred upon the Community to act in the international sphere and the feasible powers of the member states in the performance of such. As mixity is one of the most distinctive features of the external relations and the practices of the EC, a key point is that it poses questions on the role of the EC and the member states in the international order. This controversy was defined by Bourgeois who stated that "The more a Community goes towards exclusivity, the greater will be the reluctance of the member states to agree in the Council on decisions taken under such power".²⁵³

²⁵¹ See supra Section 1.2.

²⁵² Mauritis J. F. M. Dolmans sharply observes that until recently the word 'mixity' "did not exist in the English language. It can be found in either the Oxford Dictionary nor any of the other lexicons of high standing", see "Problems of Mixed Agreements", Asser Instituut, The Hague, The Netherlands, 1985, p. 1. For a detailed discussion on mixity, see David O'keeffe and Henry G. Schermers: "Mixed Agreements", Europa Institute Leiden, Kluwer, The Netherlands, 1983.

²⁵³ See J. H. J. Bourgeois: "Some Comments on the Practice", in C. W. A. Timmermans (ed.) *Division of Powers between the European Communities and their Member States in the Field of External Relations*, Kluwer, Deventer, The Netherlands, 1981, p. 97.

The essence of a mixed agreement is that, to a greater or lesser extent, some of its provisions fall within the competence of the member states, while others remain at the supranational level. In practical terms, the exact division of powers between the member states and the EC within any given agreement may be quite difficult to make.²⁵⁴ In that case, the solution is for the member states to become party to such an agreement. The member states, the Council, and the Commission have often been reluctant to allocate clearly the competence of each other in regard to the international stage. The Court, for its part, has on several cases expressly recognised that some agreements require the participation of the member states and the EC.²⁵⁵ Taking into account the fact that on many points of interest and importance is not really possible to rule upon the law with certainty, the Court has emphasised the need for a closer cooperation between the EC and its member states. The roots of this duty of close cooperation are in the treaties themselves, particularly in the duty of loyal cooperation,²⁵⁶ which is derived from Art. 86 ECSC, 192 Euratom, and 5 EC.

In the case of the FCA, its mixed nature springs out from the provisions on political dialogue (Art. 3) and, according to the traditional view, also because of those provisions related to services (Art. 14), investment (Art. 15), and intellectual property rights (Art. 10). The political dialogue justifies mixity since this matter falls "within the competence of the member states",²⁵⁷ as an outcome of the Title V EC Treaty on Common Foreign and Security Policy (CFSP), which was introduced by the TEU. The second pillar of the EU is based on inter-governmental basis; hence, its scope falls outside the EC's competence. As

²⁵⁴ For further details on the division of powers, see Nanette A. Neuwahl: "Mixed Agreements: Analysis of the Phenomenon and their Legal Significance", EUI Ph. D. Thesis, Florence, 1988, Section 3.2 "Mixed Agreements as seen in the Light of the Community System of the Division of Powers, p. 15 *et seq.*

²⁵⁵ Opinion 1/78, Draft International Agreement on Natural Rubber, 1979, ECR 2871. Opinion 2/91, ILO Convention, 1993, ECR I-1061. Opinion 1/94, WTO Agreements, 1994, ECR I-5267. In addition, in Case 12/86, Demirel v. Stadt Schwabisch Gmund, 1987, ECR 3719, the Court used the term mixity in order to portray the Turkey-EC Association Agreement.

²⁵⁶ See P. J. G. Kapteyn and P. Verloren var Themaat: "Introduction to the Law of the European Communities", Kluwer, 1989, especially Chapter III.

²⁵⁷ See Peter-Christian Muller-Graff: "Legal Framework for Relations between the European Union and the Central and Eastern European Countries: General Aspects", in Marc Maresceau (ed.) *Enlarging the European Union: Relations between the European Union and Central and Eastern European Union*, op. cit., p. 31.

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for the provisions on services, investment, and intellectual property rights, their inclusion in the FCA entails mixity according to that ruled by the Court in the Opinion 1/94.²⁵⁸

Nevertheless, case 268/94 has cast more light in defining what matters fall within the mixity concept and what should be remained outside. In this judgement, the ECJ has recalled the "objective doctrine of the measure", which holds that in order to qualify the nature of a measure, the interpreter must subject to the "aim" and "content" of it. Accordingly, the specific matters or clauses included within the agreement cannot modify the characterisation of it. The characterisation of the agreement must be ascertained by taking its *essential objective* into account. If the objective of the agreement is to implement development cooperation, the agreement bears such a characterisation, irrespective of the form in which its clauses had been worded. In this case the EC is fully competent to conclude the agreements according to Art. 130Y. Therefore, there is no mixity when the agreement limits its scope to only mention the matter where the cooperation is agreed, supposedly the matter is not a competence of the member states.

Thus, as FCAs are substantially cooperation development agreement, whose content may be agreed by the Community itself, mixity in the FCAs is staked out to the political dialogue envisaged. Services and intellectual property rights provisions do not constitute a valid argument to claim mixity so that they bear a blatant cooperation content.

7.3 FCA content in the light of the contents of the third generation Association Agreements

7.3.1 Political Objectives

The political content of the FCA is basically twofold. Firstly, it includes the so-called 'democratic clause' (as is known in the LA region) or the 'human rights clause' (as it

²⁵⁸ On the subject of Opinion 1/94 see Andrea Apella: "Constitutional Aspects of Opinion 1/94 of the ECJ Concerning the WTO Agreement", in *International and Comparative Law Quarterly*, 1996, p. 44; Julio Baquero Cruz: "Disintegration of the Law of Integration in the External Economic Relations of the EC", the *Columbia Journal of European Law*, 1997, Vol. 3, No. 2, p. 257; Jacques H. J. Bourgeois: "The EC in the WTO and the Advisory Opinion 1/94: An Echternach Procession", in *CMLR*, 1995, p. 763; Hilf Meinhard: "The ECJ's Opinion 1/94 on the WTO -No Surprise, but Wise?", in *European Journal of International Law*,

is known in Europe) as an 'essential element' of this agreement. Secondly, it also encompasses provisions for a regular political dialogue to take place on bilateral and international matters of mutual interest. As both of these aspects differ in scope and nature, it is worth dealing with them separately.

7.3.1.1 Democratic Clause.

7.3.1.1.1 Background

Ever since the early 1990s, a human rights or democratic clause (hereafter only referred to as democratic clause) has been introduced by the EC into all of the external agreements that it has concluded with third countries. The wording of the clause differs, however, depending on the country or group of countries concerned,²⁵⁹ but in essence, is formulated as follows:

"Respect for democratic principles and fundamental human rights established by the Universal Declaration of Human Rights, [the Helsinki Final Act and the Charter of Paris for a New Europe], inspires the domestic and external policies of the Community and of the [country concerned] and constitutes an essential element of this agreement"

This clause merely recalls legal instruments, which are already binding for both sides and, therefore, it is not aimed at introducing new elements into the agreements. In practice, different references to standards have been included depending on the particular country concerned. At times, the clause may also be followed by a suspension or non-execution provision by which a party that "considers that the other party has failed to fulfil an obligation under this agreement, it may take appropriate measures. Before so doing, exception in cases of special urgency, it shall supply the [Association] Council with all

1995, p. 245; and José Martín y Pérez: "La Competencia de la CE para Celebrar el Acuerdo de la OMC", *Revista de Instituciones Europeas*, 1995, p. 593.

²⁵⁹ See "On the Conclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries", COM (95) 216 final, 23 May 1995, p. 10, where the Commission recognises that the objective of a systematic approach has not yet been achieved. It asserts that "as regards the preamble [of the agreement], the practice of using different references depending on the regional location of the party concerned, when not supplemented by universal references, can appear to contradict the principle of universality; references to the market economy in agreements with OSCE countries create a different perspective having no direct connection with human rights, a fact could be prejudicial to the aim of consistency".

relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable for both parties".²⁶⁰ Moreover, unilateral and/or bilateral interpretative declarations highlight the possibility that, in case of a breach in the respect for democratic principles or human rights, a contracting party can suspend whole or part of the agreement in accordance with Art. 60(3) of the Vienna Convention on the Law of the Treaties.

Originally, this clause was addressed at developing countries only. In 1984 and 1985, references to democratic principles and human rights were also introduced, although only in the preamble, to the Lomé III²⁶¹ and the agreement that was signed with the countries party to the Treaty of Central American Economic Integration.²⁶² However, the first time the clause was agreed as such into the provisions of an agreement was in 1989, in the Lomé IV Convention²⁶³. Nowadays, this clause is not only inserted into agreements with developing countries, but also into those with developed countries.

It should be noted that, as commented in Section 3.1.1 and 3.1.2, the EAs did not provide for this clause, while in the EMAs is provided for in Art. 2 as "an essential element of the agreement". Despite this failure, the Preambles of the EAs largely refer to the protection of Human Rights, by quoting various legal instruments in this field. As regards the FCAs with Mercosur, Chile and Mexico, the clause is provided as the first article.

7.3.1.1.2 Democratic Clause and Foreign Policy: Little Room for Both Concepts?

The EC is an entity whose member states have highly protective sets of legislation on human rights in their Constitutions and laws; indeed, they are all parties to the European

²⁶⁰ "On the Conclusion of Respect for Democratic principles and Human Rights in Agreements between the Community and Third Countries", COM (95) 216 final, 23 May 1995, p. 13.

²⁶¹ The third paragraph of the preamble contains a reference to the principles of the UN Charter, which reads as follows: "Reaffirming their adherence to the principles of the UN Charter and their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations big and small". Furthermore, Annex I also contains a Joint Declaration regarding this article by which the parties reiterate their deep attachment to democratic principles and human rights.

²⁶² The preamble to this agreement provides that the parties "Affirming their support for the principles of United Nation Charter and for democratic values, in particular with regard to observance of fundamental human rights and the dignity and value of the person", OJ L 172/1986.

²⁶³ See quotation No. 8.

Convention for the protection of Human Rights (ECHR). In addition, the ECJ has ruled that human rights are a general principle of EC Law.²⁶⁴ The development of human rights and democratic principles at EC level was reflected in the preamble of the SEA²⁶⁵ and also in Art. F(2) TEU.²⁶⁶ In parallel, the EC's political will to speak with one voice on this matter, on the international stage, was endorsed by the CFSP provisions and also through new Title XVII EC Treaty on Development Cooperation, both introduced by the TEU. The former, which has become the second pillar of the EU, foresaw as one of its objectives "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms"²⁶⁷. The latter was envisaged, *inter alia*, as the appropriate means "to contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms".

This legal development proves that the democratic clause represents only one element of what is a comprehensive EC policy on human rights. This policy ranges from an internal concern with this issue, as a substantial part of the principles of EC Law which comes under the supervision of the ECJ, to an external one which is particularly reflected in the introduction of this clause into international agreements.²⁶⁸ This approach, however, gives rise to some conflicting issues, since human rights are mainly associated with individual human being (relations between individuals and states or vertical relations), while the latter only refers to states (relations between states or horizontal relations). As R.

²⁶⁴ It did so as early as 1970. See the ECJ Judgement *Internationale Handelsgesellschaft*, C-11/70, 17 December 1970. Also Opinion 2/94, 28 March 1996, p. 33, where is stated that "It is well settled that fundamental rights form an integral part of the general principles of law whose observance the Court ensures".

²⁶⁵ Through the SEA's preamble the member states proclaimed that they were "determined to work together to promote democracy in the basis of the fundamental rights recognised in the Constitutions and laws of the member states, on the Convention for the protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice".

²⁶⁶ Pursuant to Art. F(2) TEU "The Union shall respect fundamental rights, as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the member states, as general principles of Community Law".

²⁶⁷ See Art. J.1(2) TEU.

²⁶⁸ In words of the EU's Economic and Social Committee "internal and external human rights policies should be firmly linked", see Opinion on the European Union and the External Dimension of Human Rights, in OJ C 206/1997.

J. Vincent²⁶⁹ asserts: "It would be odd to speak of the foreign policy of Amnesty International or of the human rights of the Soviet Union. This odds is a sing of the difficulty of binding human rights and foreign policy together".

Along these same lines, it could be argued that the EC has been provided with a legal framework on human rights, which directly conflicts with the traditional theory of international relations termed realism. This theory affirms that the most important influence in the international arena is power.²⁷⁰ Meanwhile, the law has no place in the world of international relations because of this struggle for power in which rules are no longer valid.²⁷¹ Therefore, as has been argued, foreign policy should be guided by the national interest, which "have no moral quality".²⁷² As Morgenthau has added "the defence of human rights cannot be consistently applied in foreign policy because it can and must come into conflict with other interests which may be more important than those connected with human rights".²⁷³

Nevertheless, the realism approach to international relations has recently been criticised by those who say that it represents an old explanation for the traditional view of the international stage. Realism, has been asserted, has been overcome. Hence, the current trend is for the countries to include wide-ranging declarations on democratic principles and human rights as an integral part of their foreign policies. In this way, Mahoney argues that "human rights have become inextricably linked to many other foreign policy matters".²⁷⁴ Similar considerations can be found in the argument favoured by Peter Baerh, who has called for a more integrated application of foreign policy.²⁷⁵ The key point to keep in mind

²⁶⁹ See R. J. Vincent: "Foreign Policy and Human Rights", Australian Outlook, Vol. 36, No. 3, December 1982, p. 1.

²⁷⁰ See Andrew Moravcsik: "Explaining International Human Rights Regimes: Liberal Theory and Western Europe", in European Journal of International Relations, Vol. 1, 1995, p. 158.

²⁷¹ See Anne Marie Slaughter Burley: "International Law and International Relations Theory: A Dual Agenda", in American Journal of International Law, vol. 87, p. 207.

²⁷² See George Kennan: "Morality and Foreign Policy", in Foreign Affairs, Vol. 64, No. 2, 1985/1986, p. 206.

²⁷³ See Hans J. Morgenthau: "Politics among nations: Human Rights and International Morality", in *The Struggle for Power and Peace*, Brief Edition, UK, 1993, p. 248.

²⁷⁴ See Kathleen E. Mahoney: "Human Rights and Canadian Foreign Policy", in International Journal, XLVII, summer 1992, p. 556.

²⁷⁵ See Peter Baerh: "The Role of Human Rights in Foreign Policy", Macmillan Press, 1994, p. 4.

in regard to this point is that the politisable nature of human rights should not prevent states from displaying these concerns horizontally when implementing their foreign policies.²⁷⁶

7.3.1.1.3 EC Competence for Negotiating the Democratic Clause.

The question of the EC's competence to conclude an agreement including the democratic clause arises because, as such, it has not itself subscribed to any universal or regional instrument on this matter. It can be argued that, the EC did not exist as an entity when the Universal Declaration of Human Rights was adopted by the UN General Assembly, nor when the ECHR was signed in 1950. Furthermore, the ECJ has ruled that there is no legal basis under the Treaties which bestow upon the EC the right to issue rulings in the field of human rights or, indeed, to conclude international agreements.²⁷⁷ In addition, the Commission has affirmed before the EP that the EU does not have clear competence to deal with human rights-related matters.²⁷⁸ In truth, the EC has neither subscribed to any treaty regarding human rights nor does it have the competence to do so. Nonetheless, the clause is formulated in bilateral terms, so it not only imposes this obligation on its trade partners, but it is also binding upon itself.

Given that the EC has not undertaken an obligation in the field of human rights, at international level, it might appear, *a priori*, that it is not bound by any human rights international instrument. However, it could be also argued, to the contrary, that the EC is effectively bound by existing relevant international provisions on human rights. Firstly, it is important to note that the EC has 'legal personality' which results from Art. 210 EC Treaty. According to the International Court of Justice, this legal personality means that the EC is a

²⁷⁶ See Richard Falk: "Refocusing the Struggle for Human Rights: The Foreign Policy Illusion", in Harvard Human Rights Journal, Vol. 34, No. 34, Spring 1991, p. 61.

²⁷⁷ See Opinion 2/94 "On the Accession to the EC to the ECHR", 1996, ECR I-1759, where the Court stated that "as Community law stands, the Community has no competence to accede". See also Johannes van der Klaauw: "Accession of the European Union to the ECHR", in the Netherlands Quarterly of Human Rights, No. 2, 1996, p. 213.

²⁷⁸ See Johannes van der Klaauw: "Human Rights in the European Union: Annual Report", in the Netherlands Quarterly of Human Rights, No. 4, 1996, p. 459, who has commented that "During the debate Commissar Van der Broek reiterated the limited competencies of the EU institutions in guaranteeing respect of human rights within the EU".

"subject of international law and capable of possessing international rights and duties".²⁷⁹ Thus, as an entity with legal personality, it is subject to international law and it has capacity to hold duties under such legal regime. Therefore, as human rights are part of international law, the Commission has asserted that it is by virtue of the EC's international legal personality that the latter is endowed in international relations with the capacity to assume obligations and also to take some actions.²⁸⁰ However, this approach may also be contested when it is noted that the fact the EC is capable of being a passive subject regarding human rights obligations, does not necessarily imply though that it is competent to negotiate such obligations through international agreements. In other words, the paradox is that the legal basis for the EC undertaking human rights obligations (international law), it is not capable of bestowing upon the EC a legal competence to perform on this matter in the international community. Only EC law is capable of endowing the EC with the competence to negotiate international agreements including human rights matters, and according to the Opinion 2/94, this possibility does not exist thus far.

In case 268/94, the ECJ made it clear its position regarding this controversy. The Republic of Portugal challenged the legal basis on which the Cooperation Agreement between the EC and the Republic of India was based upon, namely Art. 113 and Art. 130Y EC Treaty.

Portugal held that Art. 1 of the agreement, which introduced the democratic clause, went beyond the scope of Art. 130U(2), which "merely defines a general objective",²⁸¹ but not conferred on the Community any specific power to agree the clause. Portugal argued that Art. 130Y was the correct legal basis for the conclusion of Cooperation Agreements where respect for Human Rights is prescribed only as a general objective of that agreement. For Portugal, the way in which the democratic clause is prescribed entails that the Community may resort to any means of action at its disposal, some of which can only be based on Art. 235 EC Treaty, because they refer to fields where the member states are

²⁷⁹ ICJ Advisory Opinion on reparations for injuries suffered in the services of the United Nations, 1949, ICJ Reports N. 174, p. 179.

²⁸⁰ See the Proposal for a Council Regulation on the Development and Consolidation of Democracy and the Rule of Law and Respect for Human Rights and Fundamental Freedoms", COM (97) 357 final, 24 July 1997, p. 22.

exclusively competent. The Council, backed by the Danish Government and the Commission, held that the wording of the democratic clause should be assessed as the corollary of Art. 130U(2). This article sets a requirement for the establishment of development policy that logically should be mentioned in the agreement itself. As far Art. 235 is concerned, the Danish Government put forward that it is the proper basis where the main purpose of the agreement is to safeguard Human Rights. In the case of the democratic clause, it may validly based on Art. 130Y.

The Court ruled, as a preliminary point, that the choice of the legal basis for a measure must be based on *objective variables*, particularly those refer to the aim and the content of the measure.²⁸² In the case brought to its jurisdiction, the Court held that the democratic clause "does not justify the conclusion that that provision goes beyond the objective stated in Art. 130U(2)". It underlined the importance attached to respect for human rights and democratic principles, in as long as, according to Art. 130Y, there can hardly be EC development policy for a country that neglects these issues. Therefore, the democratic clause "necessarily entails establishing a certain connection between those matters whereby one of them is made subordinate to the other",²⁸³ which presupposes specific means of action aimed at suspending the agreement in case the EU's counterpart violates human rights or disregards democratic principles.

Concerning Art. 235, the Court recalled on the idea that this article must be used only "where no other provision of the Treaty gives the Community institutions the necessary power to adopt the measure in question".²⁸⁴ In conclusion, the democratic clause may validly agreed by the EC according to Art. 130Y, without resorting to Art. 235.

Thus according to this judgement, the EC is exclusively competent to include the democratic clause in agreements whose main objective is development cooperation, without need to resort to Art.235. However, according to Opinion 1/94, the EC has no competence to conclude an international agreement on human rights, nor Art. 235 may be used to this aim.

²⁸¹ See paragraph 17.

²⁸² See paragraph 22.

²⁸³ See paragraph 26.

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7.3.1.2 The Political Dialogue.

7.3.1.2.1 Background

Political dialogue has its origins in the former EPC which was established on 27 October 1970.²⁸⁵ The EPC was a first step aimed at coordinating the member states' foreign policies on an intergovernmental basis.²⁸⁶ Accordingly, the EPC initiated a process that combined the pooling of information and mutual reflection, before gradually spreading to most areas of diplomatic activity, with the express exception of defense. The outcome was an increased amount of diplomatic approaches and policy statements that were agreed upon by all the member states; indeed, it was also accepted as such by the international community.

It is within the EPC context that the first reference to political dialogue was made. Indeed, it was mentioned in a document on the concept of European Identity approved in Copenhagen on 14 December 1973.²⁸⁷ By this document, the member states called for the establishment of a "constructive dialogue" with the US and other industrialised countries. A decade later, in 1982 the London Report on the EPC included a section devoted to relations between the EPC and third countries while emphasising the need to search for a mechanism that would allow the EC to speak with one voice on foreign policy matters with third countries.²⁸⁸

²⁸⁵ For an appraisal of the EPC, see Simon Nuttal: "Two Decades of EPC Performance", in *Elfriede Reselsberger (ed.) Foreign Policy of the European Union: From European Political Cooperation to Common Foreign and Security Policy and Beyond*, Lynne Rienner, London, UK, 1997. See also Alfred Pijpers (ed.): "European Political Cooperation in the 1980s: A Common Foreign Policy in Western Europe?", Martinus Nijhoff, Dordrecht, The Netherlands, 1988.

²⁸⁶ The EU is mainly an economic integration process whose external face is depicted by the CCP, a policy carried out on a supranational basis once the member states transferred part of their sovereignty to the EC level. However, as Elfriede Reselsberger, Philippe de Schoutheete, and Wolfgang Wessels rightly assert in "From European Political Cooperation to Common Foreign and Security Policy: Does Maastricht Push the European Union Toward a role as a Global Power?", in *Elfriede Reselsberger (ed.) Foreign Policy of the European Union: From European Political Cooperation to Common Foreign and Security Policy and Beyond*, op. cit., p. 2, the question of foreign policy "raises immediately, and most visible, issues of national sovereignty (...) In the peoples' collective consciousness, foreign policy, defence, and currency are basic ingredients of the nation state in a way that coal, steel, and the economy, however, important, are not".

²⁸⁷ This document was targeted at reinforcing the European identity by allowing the member states to appear in the international stage with one voice.

²⁸⁸ The London Report also introduced the so-called "troika mechanism" and proposed that the EPC could coordinate European foreign policy through the member's diplomatic missions.

The EPC practice favoured political dialogue; this new policy trend was formally and legally recognised in the SEA of 1986. Pursuant to Art. 30(8) SEA, the member states are allowed, when necessary, to establish a political dialogue with third countries or regional organisations. In fact, the provisions of the SEA did little more than consolidate previous EPC practices. Indeed, the value of the SEA, in this particular sense, is that these practices are recognised at the EC primary law through this amendment of the EC Treaty.

However, the scale and rapidity of the events which occurred in CEECs at the end of the 1980s, proved to be too great for the EPC be able to perform properly or to master a complex set of problems. On the one hand, this *momentum* was seen by some policy makers as the most suitable way for the EPC to become integrated into the EC Treaty on a supranational basis, basically by including it in the majority vote making decision process. On the other hand, however, the member states feared such a shift and instinctively strove to retain national prerogatives at all costs. Understandably, this friction undermined the far-reaching results promised by the CFSP, thus weakening the EU's second pillar as established by the Maastricht Treaty.²⁸⁹ In turn, the CFSP replaced the EPC, but it maintained its intergovernmental structure and management. As regards the political dialogue, the establishment of a CFSP entailed a step backward mainly because it did make any reference to this concept. Despite lacking this aspect, political dialogue has still been continuously provided for in the agreements which have been concluded by the EU.²⁹⁰ This provision is usually backed up by a "joint declaration on political dialogue" that is then attached to an agreement in a form of an annex.

²⁸⁹ See Spyros A. Pappas and Sophie Vanhoonacker: "The European Union's Common Foreign and Security Policy: The Challenges of the Future", EIPA, Maastricht, The Netherlands, 1996. In addition, see Martin Holland: "Common Foreign and Security Policy: The Record and Reforms", Pinter, London, UK, 1997; Christopher Piening: "Global Europe: The European Union in World Affairs", Lynne Rienner, London, UK, especially Chapter II "Toward a Common Foreign Policy"; Juliet Lodge and Val Flynn: "The CFSP after Amsterdam: The Policy Planning and Early Warning Unit", in *International Relations*, Vol. XIV, No. 1, 1998.

²⁹⁰ The Political Committee (POCO) established by Art. J.8 TUE, is the organism empowered to set up the rules for the development of political dialogue. The POCO is charged with the follow up to any international situation in those fields which concern the CFSP and its job to propose what steps to take.

7.3.1.2.2 Political Dialogue between Chile and the EU

Political dialogue between Chile and the EU was set up through Title II Art. 3 of the FCA. In parallel, two related declarations were agreed upon and then annexed to this agreement. One of them dealt with political dialogue between the governmental authorities of EU and Chile, and a second was concerned with dialogue at parliamentary level. As regards the former, surprisingly, it should be noted that it foresees the achievement of the FCA's ultimate aim of political and economic association. To this end, the parties agreed to follow the information, consultation and coordination formula that was available in the appropriate multilateral fora. The various administrative levels of the participants of this political dialogue was set out in the last section of their annexed declaration, by providing the opportunity for periodic meeting between: i) the President of Chile and the highest authorities of the EU; ii) the various foreign ministers; iii) other government ministers to discuss matters of common interest; and lastly, iv) senior officials. As to the latter, the parties only expressed their intention to support political dialogue to take place between the EP and the Chilean Parliament.²⁹¹

On the whole, the scope of and breadth political dialogue between the EU and Chile responds and follows to the guidelines that were approved by the Political Committee (POCO) in June 1996. These guidelines attempted to deal with existing problems mainly in an effort to improve the organisation and functioning of this dialogue. Accordingly, it recalled the flexible nature of this instrument and re-emphasised its final goal of allowing the EC to speak with a single voice in the international arena. Moreover, it supported a continuously evolving approach under the information, consultation and coordination formula,²⁹² as the best scheme to be used in putting and then keeping the political dialogue in motion.

²⁹¹ An EP delegation, headed by the President of the EP, visited Chile, Argentina, and Uruguay between 31 May and 5 June 1998, giving rise to the first meeting within the concept of political parliamentary dialogue foresaw in the FCA. In this meeting was agreed to hold the second political dialogue reunion at parliamentary level, in January 1999.

²⁹² See Enrique González Sánchez: "El Diálogo Político de la Unión Europea con los Países Terceros", in *Revista de Derecho Comunitario Europeo*, Vol. 1, January-June, 1997, Centro de Estudios Constitucionales, Madrid, Spain, p. 73.

Notwithstanding, these positive developments, the multiplicity of political dialogue schemes which are being carried out by the EU at LA level, may only serve to jeopardise the EU-Chile process, in as much as all of these methods foresee similar, if not identical, matters to be included in the agenda. It should be noted that, in the realm of political dialogue, the EU operates processes with the Andean Community,²⁹³ the Rio Group,²⁹⁴ Mercosur,²⁹⁵ and Chile.²⁹⁶ Thus, the Chile-EU political dialogue process overlaps with those other processes being carried out at regional level with other countries and organisations, to some of which Chile belongs. This overlapping was most blatantly when in 1997 the Seventh Rio Group-EU political dialogue meeting in Noordwijk, the Netherlands, was held. This event was followed by similar meetings held between the EU and Mercosur and Chile. It should be borne in mind that through the FCA the parties had agreed to "include other participants from the region or, where possible, be conducted simultaneously with other established forms of political dialogue". Therefore such an overlap might only have the damaging effect of seriously diminishing the scope and quality of the bilateral political dialogue by depleting and shrinking the agenda that is to be discussed.

An analysis of the EC's political dialogue with the LA region bears out the subject of Chile's specificity. It is enough just to look at a map of the region to realise that the only country in LA, which accounts for a *face-to-face* political dialogue with the EU, is Chile. The remanding countries also participate in this scheme, but on a different track, and in conjunction with other countries. In other words, the Chile-EU political dialogue have been developed on a single-multilateral basis, while the other forms of political dialogue that are carried out in the LA region with the EU, are on a multilateral-multilateral basis.

In the comparative analysis, the political dialogue provided for in the FCA with Chile is alike to that established in the EAs. Accordingly, in both types of agreements the parties foresaw several bureaucratic levels where it may take place, and additionally, the parliamentary level. As for the EMAs, it should be said that these agreements envisage

²⁹³ Joint Declaration of 30 June 1996.

²⁹⁴ Joint Declaration of 20 December 1990.

²⁹⁵ FCA of 15 December 1995 and annexed Joint Declaration.

neither a direct political dialogue between the highest authorities of the parties, nor the parliamentary level. Besides, the manner in which the political dialogue was provided for taking a clear international-security approach into account. Therefore, the wording " will contribute (the political dialogue) to the prosperity, stability and security of the Mediterranean region".

7.3.2 Commercial Objectives

The FCA only envisages commercial objectives within the context of a future association between the EC and its member states, on the one part, and Chile, on the other. Therefore, the liberalisation process has actually been postponed to an as yet unspecified date in the future through the negotiation for an Association Agreement.

As regards current commercial relations, the figures show an evident decline situation. Chilean exports to the EC have decreased from 30% of the Chile's total exports, at the beginning of the 1990s to 25% by 1996, in turn only representing a figure between 0,56% and 0,48% of the total EU imports.²⁹⁷ The forecast for 1998 is rather optimistic predicting an increase of the Chilean exports to the EU. Chilean export to the EU could reach 30%, a situation mainly triggered by the Asiatic crisis which will lead to a decrease in the Chilean exports to that region under the steady and historical 30%.

On the other hand, the impression in Chile that major European firms are not investing enough in the country, which has led many Chilean operators to believe that the EC is less interested in Chile than it used to be. This commercial declining may in part be explained by pointing out that Chile's economic integration is taking place within the context of clearly definable regional developments. Besides which, since 1994, Chile has decided to focus its attentions on a policy of closer relations with the APEC countries, by taking into account the fact that this region was developing faster economically than that other economies.

²⁹⁶ FCA of 21 June 1996 and annexed Joint Declaration.

²⁹⁷ See the EP Report, A4-0329/95, reporter Ana Miranda de Lage, on the Commission Communication to the Council and the EP on the Strengthening of Relations between the EU and Chile, COM (95) 232 final of 20 December 1995.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This includes not only sales and purchases but also expenses and income. The document further states that regular audits are necessary to verify the accuracy of these records and to identify any discrepancies.

In the second part, the focus shifts to the management of cash flow. It highlights the need for a clear understanding of the company's current financial position and the ability to forecast future cash requirements. The document suggests implementing a system of budgeting and controlling expenditures to prevent overspending and to ensure that the company has sufficient funds to meet its obligations.

The third section addresses the issue of debt management. It advises companies to carefully evaluate the terms of any loans or credit agreements and to negotiate favorable conditions where possible. The document also stresses the importance of maintaining a good credit rating, as this can significantly impact the company's ability to secure financing in the future.

Finally, the document concludes with a discussion on the role of the accounting department. It states that the accounting team is responsible for providing accurate and timely financial information to management and to external stakeholders. This involves not only recording transactions but also analyzing the data to identify trends and areas for improvement. The document encourages a proactive approach to accounting, where the team works closely with other departments to optimize the company's financial performance.

In this context, the role of trade relations with Europe, despite undeniably important economic and cultural ties, is less clear today than it was even a decade ago. If the present trend continues, there will be a gradual loosening of both commercial and economic ties, an evolution which might seriously undermine the bilateral relations. Aware of this fact, the EP has stated²⁹⁸ that it considers the proposals made by the Commission in its Communication on the future of the EU-LA partnership, to be "vague and little innovative"; indeed, it has called on the Commission to draft an action programme containing more "concrete proposals". Furthermore, the EP has called on the Council and the Commission to bring all possible mechanism into play in order to implement the FCA, so that "rapidly and efficiently, the objectives contained in those agreements" may be achieved.

The current state of bilateral commercial relations deserves two further comments. Firstly, 91% of the Chilean exports to the EU are made up of raw materials; of this figure 82% enter duty free into the EU market. Moreover, 29% of these items are agriculture or by-products of agriculture, whose exportation to the EU is made more difficult because of the existing CAP rules. Secondly, although Chile has been attempting to overcome its raw material exporter profile, it has not yet been successful in its endeavour. For this reason, Chile has repeatedly called the fairness of the EU's tariff structure into question by stating that it represents a protectionist measure aimed at hindering free trade, since its rationale is to impose high tariffs according to any individual product's added value. In other words, manufactured and semimanufactured products are bound within the constraints of the highest tariff level, while raw materials enjoy a low or even a zero tariff.²⁹⁹

Regarding Chile, its economic reform was based on developing an outward economic model, hence foreign trade has become the most important field of this strategy. Therefore, foreign trade accounts for over 40% of GDP. Additionally, Chile applies a uniform and flat low tariff of 10%, which will decrease by 1% every year until getting a 6% rate by January 2003. The Chilean tariff structure is backed by the absence of non-tariff

²⁹⁸ See the EP Resolution, OJ C 33/1997, "On the Commission Communication on the EU and LA: The present situation and Prospects for closer Partnership 1996-2000", COM (95) 495 final, of 23 October 1995.

²⁹⁹ This tariff structure echoes the ECLAC proposals. See *supra* Section 5.1.1.

measures and foreign investment statute, which has favoured the investment of US\$ 60 billion during the last fifteen years.

In the whole, Chile appears with an open economy, while the EU commercial policy has blatant limitations aimed at hampering trade access to the EU market. Among the measures often mentioned, it could be noted those relate to import certificates, quotas, entry prices, anti-dumping duties, seasonal permits, phytosanitary norms, and special standards requirements. Arguably, all of these measures provide the EU with a shield whose goal is to protect the common market from international competition, while avoiding LA exports from entering the EU market.

Recently and according to WTO commitments, the EU has reduced part of its tariff structure, but this has not been sufficient in the view of the LA countries, which continue expressing dissatisfaction. Especial dissatisfaction has been expressed regarding the tariff situation of the sensitive products, largely agriculture and textiles, where LA's commercial interest is well founded.

In sum, the commercial integration between Chile and the EU is marked by differences whose content may flow out from the economic growth models they have chosen. On one hand, the EU has allocated top importance to the common market installing high tariff, in order to boost the inter-regional exchange by avoiding competition from international actors. On the other hand, Chile has unilaterally opened its market to international competition, which entails dismantling the external tariff to liberate economic forces to foster efficiency. In this context, once again the EU's sensitive products are to be the cornerstone in negotiating an association. This situation resembles that occurred regarding EAs and EMAs. Presumably, the EU's strategy will be either to maintain the *ex-ante* commercial *status quo*, or to concede greater quotas for the Community's consumption not covered by its own production. In so doing, it will forge a complex scenario where CEECs, Med countries and LA will have to vie for the same market, based on similar market access concessions, especially concerning agricultural products.

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7.3.3 Development Cooperation Objectives

7.3.3.1 Preliminary Clarifications

Development cooperation (DC) has been identified as the third content of an association agreement by this thesis. This is the most important feature, as well as being a dynamic area of the EC's external relations. However, this particular field is far from being a subject in which no flaws exist regarding its scope and nature. In an attempt to clarify some of the issues involved straight-away, it has to be said that, firstly, scholars and EC official documents often refer to this phenomenon using different expressions; these terms include Third World Cooperation, assistance policy, aid policy, economic cooperation, development cooperation, etc. This thesis uses the last term because it is based on the name attached to Title XVII EC Treaty, that is 'on Development Cooperation'.

Secondly, EC practice demonstrates that there are broad ranges of instruments and procedures aimed at the same purposes, but they lack of a coherent master-plan encompassing all of them under a unique criteria.³⁰⁰ Nevertheless, as the TEU entered into force, it is at least possible to define DC as every measure aimed at fostering the social and economic growth of developing countries, by attempting and pursuing their gradual and smooth integration into the world economy, while at the same time fighting against poverty.³⁰¹ At the same time, it is possible to draw a distinction between DC provided on a bilateral basis and that provided on an ad-hoc, or on a unilaterally basis. To the former set of DC belong all of the agreements including development cooperation provisions, especially among all the Cooperation Agreements concluded by the EC with LA countries thus far. Meanwhile the latter form includes measures and instruments which are not agreed bilaterally, but serve the interests of developing countries, such as the EC food aid program and the Generalised System of Preferences (GSP).

Thirdly, it might be noted that the global view of this matter is usually blurred because of the wrangling that takes place between the various EC and the national levels of

³⁰⁰ For instance, the EC accounts for budgetary items, committees, food policy, ad-hoc aid programmes, the Development Cooperation Fund, Cooperation Agreements, etc. All of them are aimed at, or include, a different kind of development cooperation.

³⁰¹ See Art. 130U EC Treaty, which sets out the objectives of DC.

administration. There is no room in this work, however, to deal with this aspect in any detail, only to point out that the new Title on DC refers to this matter. Finally, it should be added that, until recently EC law did not make any mention of, and consequently did not allocate any powers to deal with DC. Yet, it is clear that problems regarding interpretation of the legal heritage on DC will rise the new onset of these rules, and even with the rules themselves.

7.3.3.2 The Background at the EC Level

The DC's background has been greatly influenced by the history of the association policy. As was commented upon in Part I of this work,³⁰² the original text of the EC Treaty provided in Art. 3(k) that one of the EC's objective was "to increase trade and to promote jointly economic and social development" of the overseas countries and territories. Accordingly, Part IV EC Treaty was exclusively devoted to providing the legal framework for the development of this association. Association and development cooperation thus became synonymous. The association policy was further developed with the conclusion of Yaoundé I (1963) and Yaoundé II (1969), themselves the precursors to the conclusion of successive Lomé Conventions.³⁰³ At the same time, Association Agreements based on Art. 238 were also aimed at accomplishing these very same goals of DC.

In assessing the DC content of this DC policy at its roots, it might be remarked here that it was mainly a conventional policy which was limited to the provisions and realisation of two objectives. Firstly, it provided for commercial objectives by allowing the associated countries to enter unilaterally their products into the EC market on a duty free basis. Secondly, it also foresaw the future framework for a DC policy aimed at fostering the social and economic structure of the associated country.

In parallel, the EC also began to put into practice some unilateral aid measures, on an ad-hoc basis. These measures consisted of aid granted to a country or region because of natural disasters, for instance, through temporary exchange programmes for technicians,

³⁰² See supra Section 1.1.1.

³⁰³ See supra quotation No. 8.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

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5. The fifth part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress. The letter is written in a formal, dignified style, and it is one of the most important documents in the history of the United States.

the transfer of technology for certain productive sectors, and through other commercial measures that lay within the scope of its faculties. A key expression of the unilateral aid granted by the EC to developing countries is the GSP. The SGP was established in 1970 by the UNCTAD, principally as a concession from industrialised countries whereby manufactures or semimanufactures from developing countries were allowed duty free entry into their markets or entry at reduced rates.³⁰⁴

Thus, the EC's DC policy was carried out without prejudice of the member states' competence to work out their own DC programmes. Indeed, it was to co-exist with the aid which was being bilaterally distributed by the member states. Understandably, it has still produced, although even less often than might be expected, instances of conflicting interests which could have called for a better coordination.³⁰⁵

7.3.3.3 The Legal Basis

As was pointed out in an earlier paragraph, finding a legal basis for DC was rather problematic, since the original EC Treaty did not allocate any express competence to the Community in this field. This legal gap was finally resolved by the entry into force of the TEU. Therefore, in order to present a global overview of this matter, a distinction has to be made between the legal basis that existed before the TEU entered into force and the situation that has existed thereafter.

a) The situation before the advent of the TEU

Before the TEU came into force, the legal basis for carrying out DC was limited to Part IV EC Treaty. At the same time, Art. 238 allowed the EC to achieve the same DC

³⁰⁴ The GSP was first proposed by Raúl Prebisch in a report submitted to UNCTAD, in 1964. The GSP scheme was finally agreed upon by the UNCTAD in 1970. The EC was the first preference donor world wide when implementing the GSP scheme on 1 July 1971. For further details as regards the EC-GSP, see Gerrit Faber, op. cit. chapter 3.2.2 "The European Community GSP", p. 56 *et seq.*

³⁰⁵ See Enzo R. Grilli: "The European Community and the Developing Countries", Cambridge University Press, UK, 1993, p.79, who asserts that: "The groups that most fear coordination of aid at the EC level, including the natural bureaucracies that administer aid and state-owned (and often private) enterprises that often have *de facto* preferential access to procurement from national authorities that they are capable of

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goals by implementing an association policy, mainly directed towards the Mediterranean in the 1970s and the following decade towards the CEECs.³⁰⁶ However, EC law lacked a provision by which competence on this matter could be expressly allocated at the EC level. This lack of competence did not prevent the EC from negotiating international agreements, including DC-related provisions in regard to financial and technical assistance, the legal base was found in the Art. 113-235 formula.³⁰⁷ Neither did it prevent the EC from pursuing DC objectives via instruments or actions which were legally based on provisions which initial target was not a DC process, such as the GSP³⁰⁸ (Art. 113), or some fisheries agreements (Art. 43).

Actually, the original EC Treaty acted as a real straight-jacket for the EC's political will to engage in an increasing international trend that intended to stimulate, in developed countries, aid policies towards developing countries. It is clear that behind this interest in exercising its political will, the EC also wanted to enhance its capacity to speak with one voice on the international stage. Therefore, the Community used the legal tools that were at its disposal to promote and attain DC objectives. These legal tools were those provisions that confer upon the EC with exclusive powers, such as those related to CCP and CAP. In this context, the employment of Art. 235 EC Treaty to conclude Cooperation Agreements should be seen as a last recourse in any attempt to achieve or to implement DC objectives in the international arena.

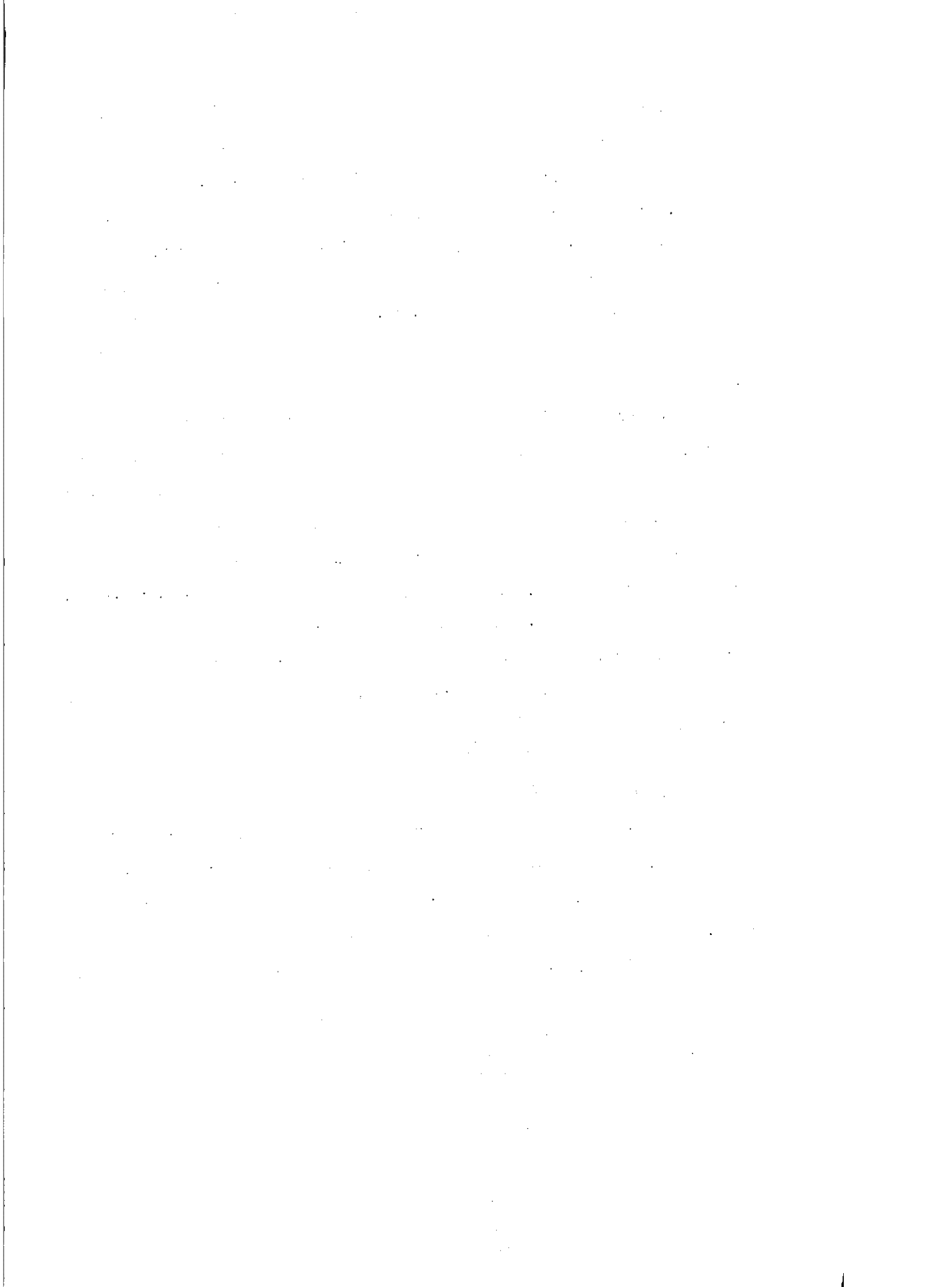
b) DC under the TEU

According to Art. 3(Q) the activity of the EC includes its right to have a "policy in the sphere of development cooperation". The crystallisation of this objective was Title XVII EC Treaty, introduced by the TEU. Since has come into force the TEU, the EC has been empowered to carry out DC policies internationally. Title XVII on Development Cooperation, Art. 130U to Art. 130Y, is currently the legal framework for the EC to

preventing even those modest steps towards Europeanization -through EU coordination- that would be useful also from the standpoint of national interest".

³⁰⁶ See supra Section 3.3.1.

³⁰⁷ See supra Section 1.2.



implement this kind of policy, which in any case, should also be "complementary to the policies pursued by the member states".

Art. 130U(1) sets out the objectives of the EC's policy by stating that "to foster the sustainable economic and social development of developing countries, and particularly the most disadvantaged among them; the smooth and gradual integration of the developing countries into the world economy; and the campaign against poverty". Indeed, it also provides that DC policy "shall contribute to the gradual objective of developing and consolidating democracy and to that of respecting human rights and fundamental freedoms", while Art. 130U(2) establishes as a general objective "consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms". This provision may be assessed as the most recent stage in linking human rights, the rule of law and democracy together in the implementation of Western European DC policy.³⁰⁹ With this in mind, it should also be noted that Art. J.1(2) of Title V TEU, that is, dealing with the CFSP, closes a coherent circle in policy by stating that the development and consolidation of democracy, the rule of law, the respect for human rights, and other fundamental freedoms are among the objectives of the CFSP.

Art. 130V provides that the EC must take the objective referred to in Art. 130U into account in the policies that it implements that are likely to affect the developing countries. For its part, Art. 130W states the legal mechanism to be used in accomplishing the EC's objectives in this field. It authorises the Council to adopt DC measures which may take the form of multiannual programmes that may in turn also be supported by the EIB. The third paragraph of Art. 130W provides that this new Title does not affect cooperation with the ACP countries in the framework of the ACP-EC convention. This is an attempt to preserve the particular background and structures established under the Lomé Convention as the sole mechanism for giving DC assistance to the ACP countries.

³⁰⁸ This instrument gave rise to the Case 45/86, *Commission v. Council*, 1987, ECR 11493, whereby the Court ruled that the GSP was an Art. 113 instrument, although its aims were related to DC objectives.

³⁰⁹ In this sense, the most important Resolution issued at the EC level, that is, before the TEU entered into force, was the Resolution of the Council and the member states meeting within the Council on Human Rights, Democracy and Development issued on 28 November 1991, Bull. EC 11-1991, point 1.3.67.

On the other hand, Art. 130X provides that the EC and the member states must "coordinate their policies", as well as consulting each other on their aid programmes. It also adds that they may undertake joint action³¹⁰ regarding their DC objectives, in turn empowering the Commission to take any useful initiative to that goal, that is, to promote this coordination. In reality, this provision is mainly a legal attempt to put an end to the supranational and national seemingly tussling between different considerations in this field.

Finally, Art. 130Y recalls this coordination process, but recognises the existence of a two-track system in the implementation of DC, by stating that the EC and the member states must cooperate with third countries and international organisations, within their respective spheres of competence. Besides this call, it also provides that DC may be negotiated in international agreements subject to the Art. 228 procedure. This possibility is without prejudice to member states' competence to negotiate and to conclude international agreements on the same matter.³¹¹ Thus, according to Art. 130Y, there is no much scope for adopting a Cooperation Agreement on the basis of Art. 235 EC Treaty.

7.3.3.4 EC Competence for Negotiating Development Cooperation

The objectives settled by Art. 130U are wide-ranging. In fact, because "sustainable economic and social development" are the objectives, it is then possible to encompass political, humanitarian, and economic criteria, thus making the boundaries of competencies between the EC and the member states difficult to draw. For instance, the FCA concluded with Chile contains, *inter alia*, provisions on political dialogue, democratic clause, culture, fight against drugs, as well as on services, intellectual property rights, and environment. All of these matters may well be aimed at fostering the economic and social development in Chile, and thus, fall within the scope of Title XVII. However, it could also be also argued that some of these provisions fall within the scope of other EC provisions, such as Art. 113 (CCP), Art. 128 (Culture), or Art. 130R (Environment). It could also noted that services

³¹⁰ The Council could also, hypothetically, coordinate a joint action on DC under the Joint Action foresaw in Art. J.3 TEU.

³¹¹ This provision is known as "Canadian Clause", because it was first introduced in the Canada-EU agreement of 1976.

and intellectual property rights are matters where the EC has not competence, according to that ruled by Opinion 1/94.

The trend shown thus far has been to base Cooperation Agreements on Art. 113, 130U and 130Y. These latter are assumed as the correct legal basis since Title XVII has replaced the scope of Art. 235 regarding development cooperation. A paramount judgement concerning this controversy can be found in case 268/94. In ruling this case, the ECJ cast light on defining the scope of those articles forming new Title XVII. The controversy arose when the Government of Portugal, supported by Greece, contested the choice of the legal basis on which the Decision whereby a Cooperation Agreement between the EC and the Republic of India was concluded, namely Art. 130Y. Portugal put forward that instead of Art. 130Y and Art. 113, Art. 235 should be considered as the correct legal basis, especially regarding the provisions related to specific matters for DC. It argued that Art. 130Y is not sufficient to allow the EC to conclude an agreement without the participation of the member states, in respect to those matters where the EC has not been empowered, exclusively or by implication, with the respective competence. That is the case of the specific matters related to energy (Art. 7), tourism (Art. 13), culture (Art. 15), drug abuse control (Art. 19), and intellectual property rights (Art. 10), all of which were included in the agreement contested.

The Court pointed out, as a preliminary statement, that Title XVII EC Treaty confers upon the EC specific competence to conclude agreements in the sphere of development cooperation, although this competence is not exclusive but complementary to that of the member states.³¹² In stating this, the ECJ reaffirmed the idea that the aim of Title XVII was to endow the EC with the necessary legal power to deal with DC at international cooperation. In other words, the EC has now a wider room to manoeuvre respect to the member states in the field of DC. Once made this clarification, the Court ruled that the question on whether a cooperation agreement should or not be based on provisions other than Art. 130Y, must be ascertain analysing the purpose pursued by the agreement itself. The Court's rationale then was to define the objective of the agreement as

³¹² Paragraph 35.

the cause for the respective correct legal basis. Therefore, the Court stated that for an agreement to qualify as one of a cooperation type must accomplish the objectives provided for in Art. 130U. As the objectives settled in Art. 130U are broad in sense, they might cover a wide-range of specific matters. Consequently, the allegations of Portugal, driven to claim for an additional legal basis in the subject-matter, "tantamount to rendering devoid of substance the competence and procedure prescribe in Art. 130Y".³¹³ This be said to conclude that the characterisation of the agreement "must be determined having regard to its essential object and not in terms of individual clauses",³¹⁴ provided that these clauses do not impose duties of a distinct nature other than development cooperation. This concept is further buttressed in paragraph 47 when stating that "The mere inclusion of provisions for cooperation in a specific field does not therefore necessarily imply a general power such as to lay down the basis of a competence to undertake any kind of cooperation action in that field". According to the same *rationale*, the Court held that by mentioning specific fields within a cooperation agreement does not entail the allocations of competence between the EC and the member states, but the interpreter must be subject to the final objectives with a view to the agreement was concluded.

Case 268/94 came to back the EC law trend to confer upon the EC sufficient power to appear in the international arena confident and independent from the member states. It recognised that the EC had been empowered to deal with DC at international level, without resort to the procedures established at primary law, which allow the member states to interfere in the DC process. In the past, the member states' participation in this field was recurrently based on Art. 235, while after Title XVII entered into force this resort has no sense anymore.

7.3.3.5 Four Remarks on Title XVII on Development Cooperation

It is possible to look upon the introduction of a new Title on DC, at the level of primary EC law, favourably. This Title is aimed at providing the EC with a suitable legal

³¹³ Paragraph 38.

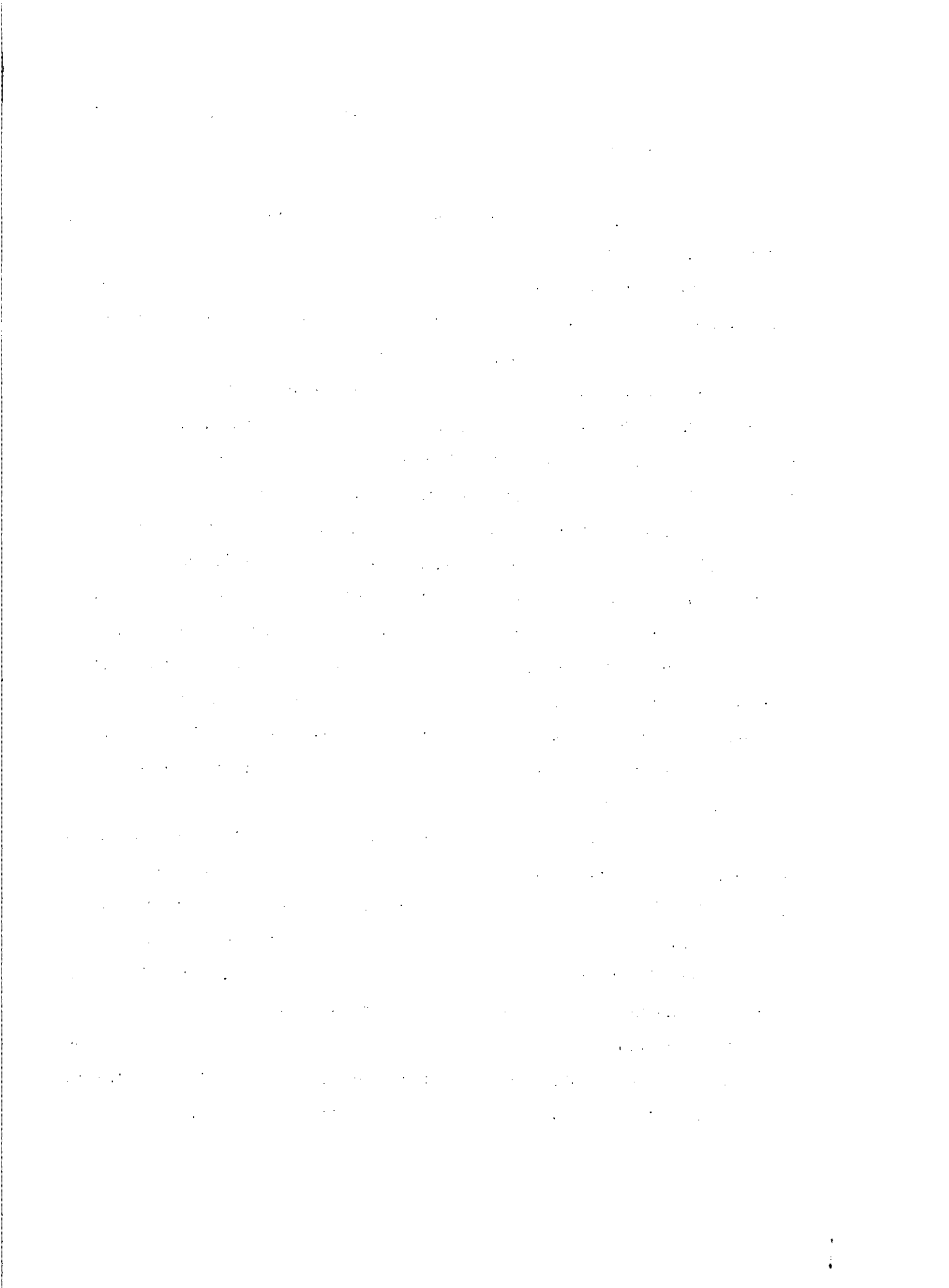
³¹⁴ Paragraph 39.

framework to carry out one of the most important aspects of the EC external activities. However, in the global context there are some points that need to be underscored:

i) the EC's competence on DC must be "complementary" with the policies pursued by the member states, according to Art. 130U. This provision does not make it clear, however, how this is to be achieved; therefore, this issue has been dealt with at the level of secondary EC law or through an arrangement between the member states' officials in Brussels and the Commission authorities. In addition, questions on EC initiatives, for instance, in areas where the member states are not present, can also be the cause of frictions. This of course, can lead to the possible situation in which there is no initiative on the part of the member states; thus, the question arises, can there then be any EC DC complementary policy?

ii) the link between DC and human rights, democracy and the rule of law, settled in Art. 130 U(2), is an expression of a coherent EC external policy. This provision reflects the fact that the EC is concerned with making human rights and democracy the cornerstone of its foreign policy, the scope of which horizontally must be implemented. The underlying conditionality involved in the wording of this provision is only an expression of the EC's political willingness to use every available opportunity to put this link into practice. Cooperation Agreements and, in general, international agreements concluded by the EC are assessed as suitable instruments through which to endorse this policy. In truth, the EC appears to act under the basic principle that trade and cooperation are also a major constituent part of foreign policy.

iii) the provisions of Title XVII support the two-track approach to DC policy. This means that one kind of DC may be carried out at the EC level, while the member states are also capable of implementing their own assistance programmes. This assertion is grounded in the wording of Art. 130U where it says that EC policy must be "complementary to the policies pursued by the member states". The very same position arises out of Art. 130X, where it states that the policies of the EC and the member states are to continue in consultation with each other, and from Art. 130Y, which provides for EC competence to enter into international bodies without prejudice to member states' competence to negotiate in international bodies or to conclude agreement. This approach has also been borne out by



the ECJ in the Joint Cases C-181 and C-248/91 *Parliament v. Council and Commission*.³¹⁵ Through these cases, the Court held that EC competence was not exclusive, therefore the member states are not prevented from exerting their competencies either individually or collectively, either within or outside the Council.³¹⁶ The member states are also able to enter into agreements with third countries either by themselves or jointly with the EC.³¹⁷ This competence may be defined as parallel or concurrent in nature, because the EC's competence to act in DC fields does not in itself necessarily deprive the member states of their capacity to act in the same matters.

iv) in the whole, DC legal framework seems to be calling for the application of the duty of cooperation derived from Art. 86 ECSC, 192 Euratom and 5 EC Treaty. It should also be reminded that Art C TUE, by which virtue the Council and the Commission are responsible for ensuring the consistency of the external activities of the Union as a whole in the context of its external relations, security, economic and *development cooperation*. Furthermore, the words *complementary* (Art. 130U) and *coordination* (Art.130X) remind the close cooperation doctrine coined by the ECJ ruling case 1/78 where it stated "That obligation to cooperate flows from the requirement of unity in the international representation of the Community". This doctrine was reiterated later on, in Opinion 2/91 (ILO Convention), Opinion 1/94, and in TACIS case.³¹⁸ In the latter the Court once again recalled on the duty of cooperation, by which the EC and the member states must accord each other the necessary cooperation in order to achieve the goals foresaw.

Nevertheless, the fact is the duty of cooperation has traditionally been commented as inherent part of mixed agreement and, as from case 268/94, there is no mixity in agreements whose principal objective is DC. The words *complementary* and *coordination* rise questions on whether Title XVII has opened a little room for forging a new doctrine on the duty of cooperation, or could it be adapted to agreements where mixity is no

³¹⁵ Joint Cases C-181 and C-248/91 *Parliament v. Council and Commission*, 1993, ECR-I, 3685 (Bangladesh case).

³¹⁶ See paragraph 16.

³¹⁷ See paragraph 26.

³¹⁸ Tacis case, European Parliament vs. Council, 1995, ECR I-1185.

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longer valid. In other words, is the duty of cooperation somehow behind the meaning of these new words?

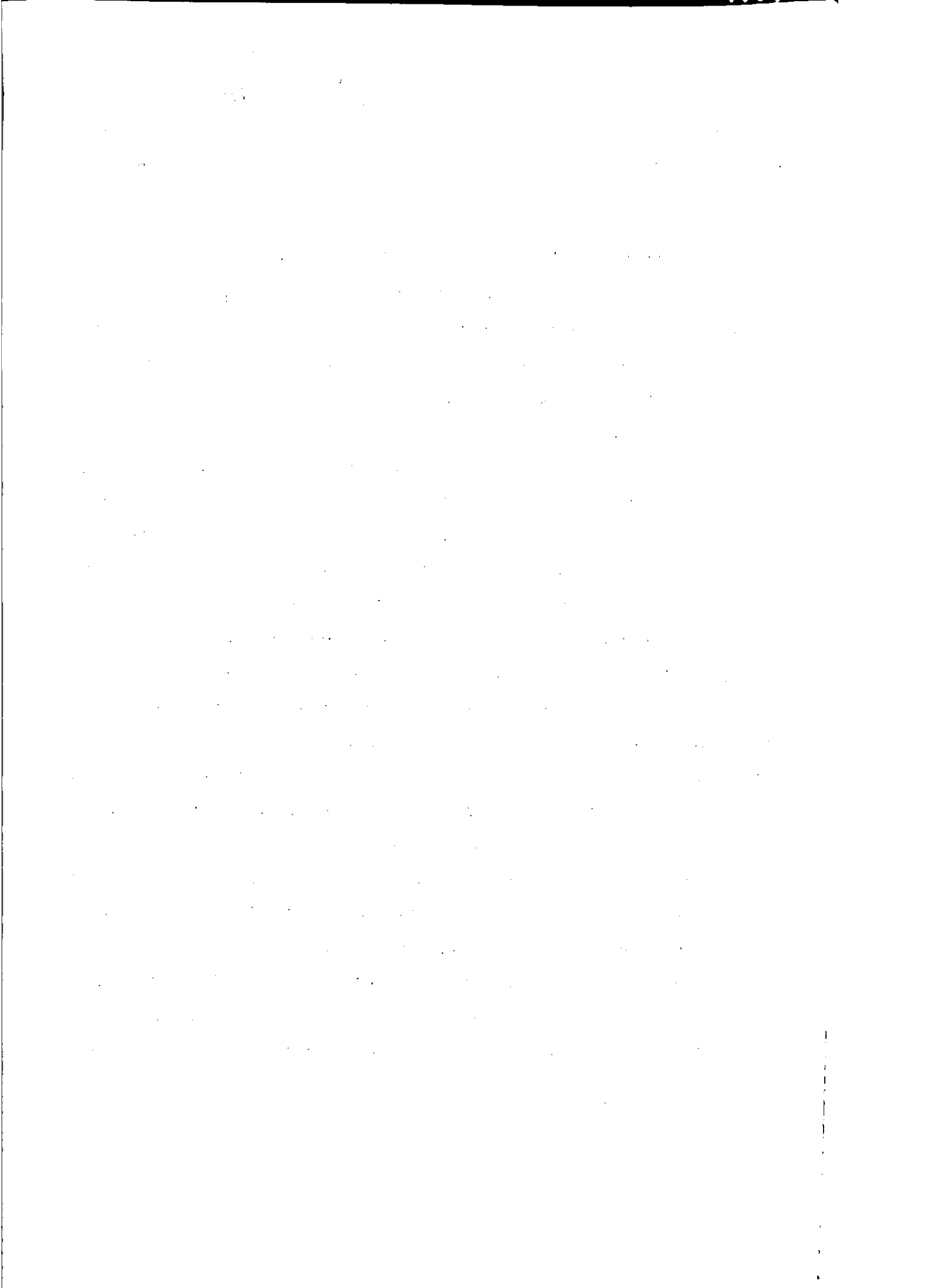
7.3.3.6 DC Content in the Framework Cooperation Agreement

The FCA's content is provided for in three different Titles along with the agreement. These are comprised of: i) Title III on Trade Cooperation and Preparation for Liberalisation Trade; ii) Title IV on Economic Cooperation; and iii) Title IV on Other Areas of Cooperation. This framework is all backed by Title IV when the means to implement cooperation is considered.

The analysis of the DC's content in the FCA is supposed to be made by comparing it to a similar content, which may be found in the model used for exploring the issue of DC in regard to EAs and EMAs, for example, the EC-Poland EA.³¹⁹ The outcome of this comparison is twofold. Firstly, the more general finding shows that, in this model, the areas of cooperation were mostly settled under the Title regarding Economic Cooperation; it is only by way of an exception that any others were provided in a separate Title, thus highlighting its relevance for the relationship. On the contrary, in the FCA, the areas for cooperation were mainly provided for depending on the final aim attribute to them. In this sense, it can be said that the legal technique is more accurate, if limited to the scope of the respective Title under which the field was provided. However, it can be also argued that three Titles on cooperation is to exaggerate an issue whose only real target is to distract the attention away from a lack of commercial objectives.

Secondly, regarding every single area for cooperation envisaged, it should be remarked that all the fields covered by the model under the Title on Economic Cooperation, are in the FCA as well. There are some notable exceptions as well, which including broadcasting, banking and insurance, monetary policy, nuclear safety, and the epigraph on economic cooperation itself.³²⁰ However, the fields included in both are not dealt with under the same Title, but are scattered among the three Titles mentioned above.

³¹⁹ See *supra* Section 3.3.1.



Moreover, there are some fields covered by the FCA which deserve no mention in the model, such as intellectual property rights and public procurement (Title on Trade Cooperation), inter-institutional cooperation, consumer protection, triangular cooperation, and financial and technical cooperation (Title on Other Areas of Cooperation).

On the other hand, the amount of DC from the EC to Chile increased from ECU 13.2 million in 1990 to some ECU 24 million by 1994. The main sectors which benefited were agriculture, investment promotion, and industrial and energy cooperation, as well as poverty alleviation, governmental reform, and the internationalisation of the production system. In addition, the DC concept has been strongly endorsed by the setting-up of the "Fundación Empresarial Chile-Europa", a centre for economic cooperation and technology, which was founded in 1991. This centre has as its main task the provision of services to small and medium-sized enterprises, with such facilities as technical, economic, and financial information, the dissemination of know-how and technologies from the EC. Furthermore, it has played a remarkable role in promoting contacts between economic operators in the EU and their Chilean counterparts.

It is reasonably expected that DC is to be enhanced in the years to come after concluding an association. It constitutes a valuable heritage between Chile and the EU and it is assessed favourably by the parties. However, new advances in this field should be taken in order to improve the Chile's industrial competitiveness, so as to change the pattern of the traditional trend. What the EU has made in med countries could be useful to draw a new global cooperation plan regarding the Chile, although the amounts committed are not of similar size. On the part of Chile, to improve the management of cooperation and to use the EU cooperation lines in a better way should be tasks to be ranked top priority. Again what is currently happening with the Med programmes and PHARE may serve as models to substantially ameliorate the bilateral trend.

³²⁰ It should be noted that there is a Title on Economic Cooperation, but also Art 93 EC-Poland carries also the name "Economic".

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in financial matters. The text notes that without reliable records, it is difficult to track progress, identify trends, and make informed decisions.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It mentions the use of surveys, interviews, and focus groups to gather qualitative information, as well as statistical software and data visualization techniques for quantitative analysis. The importance of ensuring the reliability and validity of the data is stressed throughout this section.

3. The third part of the document describes the process of interpreting the results of the data analysis. It highlights the need to consider the context of the data and to be cautious about drawing conclusions based solely on the numbers. The text suggests that a combination of qualitative and quantitative insights can provide a more comprehensive understanding of the issues at hand.

4. The fourth part of the document discusses the challenges and limitations of the research process. It acknowledges that there are always potential biases and errors in data collection and analysis, and that the results may not be generalizable to all situations. However, it also notes that by following rigorous research practices, these challenges can be minimized.

5. The fifth and final part of the document provides a summary of the key findings and conclusions. It reiterates the importance of ongoing monitoring and evaluation, and suggests that the research findings should be used to inform future actions and decisions. The text concludes by expressing confidence in the value of the research and its potential to contribute to a better understanding of the subject matter.

8. CONCLUDING REMARKS

1. The EC's association policy towards the LA region is one of the most important challenges that it faces in the context of external policy. It was launched in the post-Cold War era just when the EU has been enjoying a wider room to manoeuvre in international affairs. It coincides and overlaps with a similar policy which has been implemented with regard to the EU's periphery: European Agreements (EAs) regarding Central and Eastern European countries and Euro-Mediterranean Agreements (EMAs) as for the med countries.

In the case of the LA countries, the association policy was devised on the basis of the Framework Cooperation Agreements (FCA), which, unlike the EAs and EMAs, are as yet devoid of commercial objectives. In this respect, the EC's association policy towards the LA region could be contested by asserting that, while commercial objectives are not being put into practice, the traditional pattern in these relations, that is, based on political and development cooperation, has been maintained.

2. EAs and EMAs were the main outcome of the EC's concern for regional stability. In this respect, the AAs have proved to be a very useful legal tool capable of managing political and development cooperation interdependencies. In contrast, however, the envisaged association policy towards the LA zone appears to have been built on mere economic grounds. The EC is well aware that the LA's economic profile has greatly improved since the debt crisis of 1982. Indeed, it is now considered an economically emerging zone. Consequently, a modification in its external policy pattern must be instituted in order to respond to the political, economic, and social changes that have been occurred in the LA region. It was clear at that time that future partners in LA did not expect anything other than increase in their commercial exchanges. Trade not aid was the LA's desire. Therefore, far from simply offering to the LA countries an AA model, already proved regarding CEECs and Med-Countries, the EC proposed to negotiate agreements that were almost identical to the texts of the EAs and EMAs, but devoid of commercial objectives. This approach has been presumably aimed at gaining time, so as to manage the EU's periphery prior to engaging in a new and complex scheme with LA countries.

Despite the fact no liberalisation of the exchanges was envisaged, the sole purpose to conclude an Association with LA countries still demonstrates the fact that, for the first time, an association policy was given the chance to be tested on a non-regional-security-basis.

3. A first legal approach to the Association concept helps to portray the evolution in the foundations of the association policy. Association agreements have been important part of the EU's external trade relations, whose designing has also been based on progressive provisions of the Treaties. In its analysis, both Art. 238 and Art. 113 should be borne in mind, because both are inextricably linked to the external trade relations of the EU and because by contrasting them it might be easier to draw more accurate conclusions.

Art. 238 EC Treaty, the legal centrepiece in the association policy, is capable of creating privileged links between the EU and the third country, whose content fall to some

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extent within the scope of the EC law (Demirel case). Under the umbrella of Art. 238, the content of an agreement may go well beyond a trade content, including development cooperation matters without recourse to any other provision of the treaties. Besides, Art. 238 involves a political message addressed to the third country, in the sense that the relationship to be established avails a priority from the EU position. In contrast, Art. 113, the other provision that could be used in international trade agreements, confer upon the Community enough competences to deal only with trade and tariff concessions.

Geographically speaking, Art. 238 has prevailed over the Art. 113-235 formula concerning the med countries and CEECs, while the latter has been consistently applied in the contractual relations established with LA countries. This situation evidences the importance attach to each geographical region.

On the other hand, as far as Art. 113 is concern, it is worth underlining that the 113-235 formula was a legal resort to overcome the lack of EC powers in the field of development cooperation. The legal shortfall of Art. 113, as to cover development cooperation matters, was expressly reckoned by the EU institutions. The use of Art. 235, however, entails for the member states the special value to be empowered upon the competence to intervene with veto right in the making-decision process. Besides, the member states' prerogatives were further guaranteed by the ECJ when ruled that Art. 235 "cannot in itself vest competence in the Community at international level" (opinion 1/94, pa. 90). In fact, Art. 235 was for a long time a residual provision on which several measures, having effect in the international sphere, were adopted by the member states, provided that "there was no other provision in the Treaty to confer upon the Community institutions the necessary powers to adopt it" (GSP case, 45/86). The use of Art. 235 in internationally-related matters has increased during the last twenty years, so that the trend indicates that the distinction between domestic and international affairs has often blurred, notably in respect to trade and human rights matters.

In the whole, it seems that the meaning of Art. 235 had been seriously affected by its excessive application in international issues and also by legal amendments introduced into the treaties. The former, because to recourse continuously to Art. 235 may have provoked on the EU institutions the feeling that international affairs cannot be dealt with on the basis of a residual provision. It should be remembered in this point that the ECJ has cautioned that Art. 235 cannot be used as a basis for widening the scope of Community powers beyond the framework created by the treaties. Nor it can it be used as a basis for the adoption of provisions whose effect would in substance be to amend the treaty without following the procedure provided for that purpose (Opinion 2/94, pa. 30). This view seems to reflect the limits of Art. 235 when it is used in international hypotheses for which the treaties have not clearly allocated competences upon specific EU institutions.

As for the legal amendments, it has traditionally been said that the main raison for the TUE came into force was the integral achievement of the common market. However, it also introduced provisions which conferred upon the Community competences to deal with internationally-related matters, such as development cooperation and the competence to accord the democratic clause (new Chapter XVII EC Treaty). Thus, since the TUE came into force recourse to Art. 235 is no longer necessary regarding development cooperation.

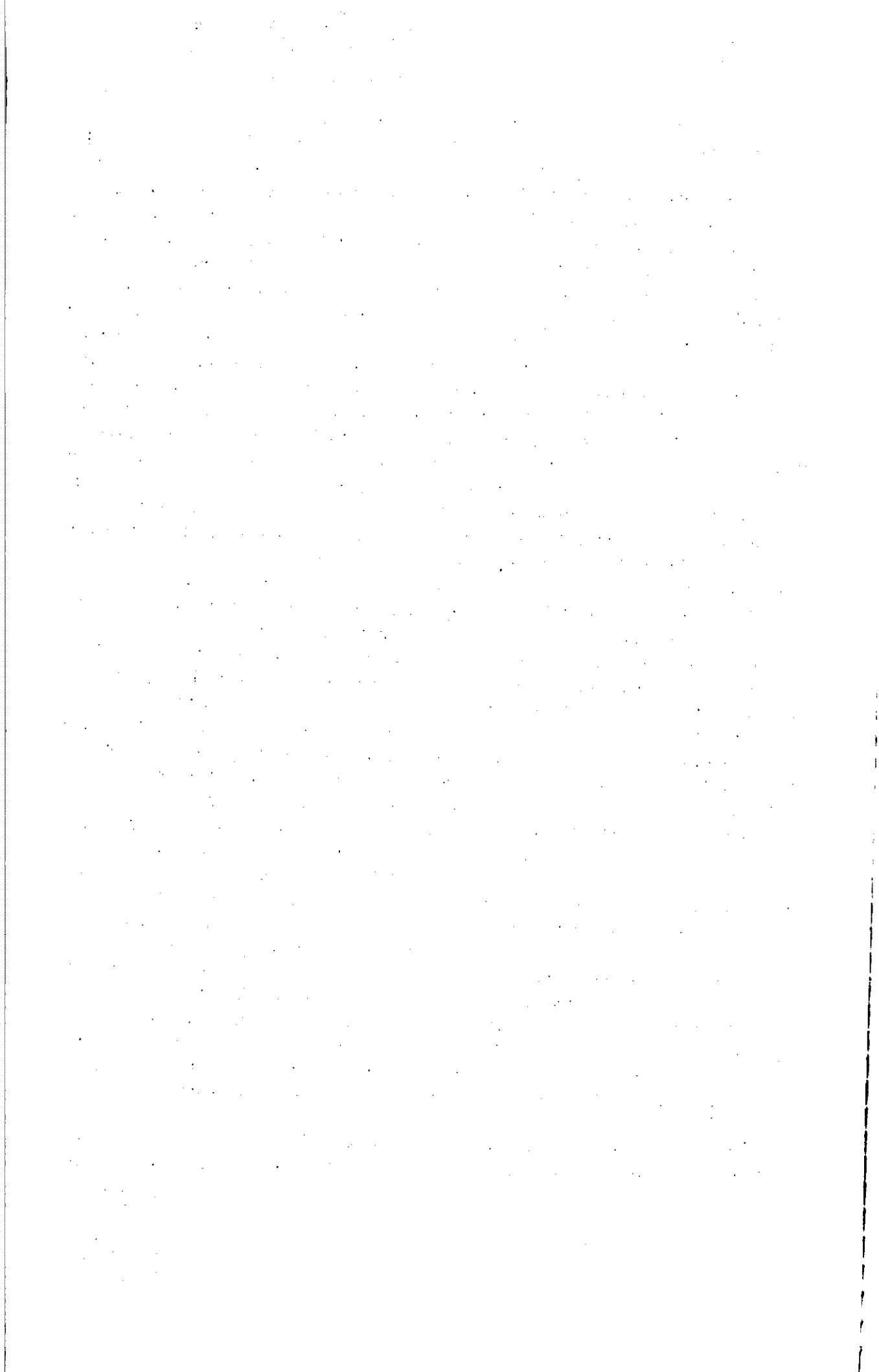
4. In the analysis of the AA's content, a tridimensional approach has been chosen as to follow the common pattern printed in all of them (especially those of third generation). By dividing the AA's content up into political, commercial, and development cooperation objectives, one may realise that the EU practice in international agreements is to resemble the same structure assigned to each AA. Despite this uniformity, several differences may also be ascertained as to the elements proposed and the wording preferred in some of them.

It was asserted that political objectives are two-fold: firstly, the democratic clause, and secondly, the political dialogue. The former is provided in as long as the EU has assumed that no cooperation might be granted to a country ruled under non-democratic principles. This was the amendment introduced by the TUE. The democratic clause allows the Community to take actions aiming at ceasing any bilateral cooperation programme with the respective country in case of breach of the democratic clause. The circumstances why this clause was not expressly worded in the EAs, as it was in the EMAs and the FCAs, remain unclear. As for the political dialogue, the main finding is that it is an exogenous element in the linkage to be established. Taken from the second pillar, its development goes in parallel to those of trade and development cooperation provisions. It is worth noting that the wording of the political dialogue in the AAs make it to appear subordinated to the goals pursued by the agreement in question. Thus, in the EAs the political dialogue would allow "the development of close cooperation", while in the EMAs, it was stated that it would "contribute to the prosperity, stability and security of the mediterranean basin". As for the FCA with Chile, the political dialogue was conceived as a mean to achieve the "Political and Economic Association with the EU and its member states".

Concerning commercial objectives, comparatively analysing only the EAs and the EMAs, because FCAs are devoid of such content, one conclusion is the EU's strategy to negotiate is designed on a very tough and narrow basis. It should be noted that the EU is responsible for the 25% of the final world output. Apparently, it is well aware of this fact when negotiates. The point is that AAs should be addressed to enlarge the EU's common market by embracing trade in goods and trade in services. This means the removal of all measures restricting trade or having equivalent effect, and whenever the case, it implies the application of the principle of mutual recognition (Cassis de Dijon doctrine). Nevertheless, the evidence shows that EU's first priority when negotiates is to maintain the common market's equilibrium steady, in an attempt to avoid the inherent turbulence free trade may provoke. In depth concern is deployed regarding the so-called sensitive sectors, largely textiles, coal, and agriculture, where scarcely a few concession were made in the EAs and the EMAs. The EU's negotiating stance is blatantly restrained by the rules set up to internally govern the common markets, mainly those related to agriculture. Therefore, the outcome in market access in agriculture products always favoured CAP rules.

On the other hand, the EU accounts with a wide set of non-tariff measures, which range from technical regulations and standards to VERs, countervailing taxes, imports calendar, quotas, tariff quotas, quality controls, and the most used EU commercial defence: antidumping procedures. Many of these measures have a well-known protectionist goal for which the EU's counterparts are hardly good-equipped.

The outcome in the services-related provisions in the EAs and EMAs is simply disappointing. No concessions were agreed in the EMAs, while in the EAs those few



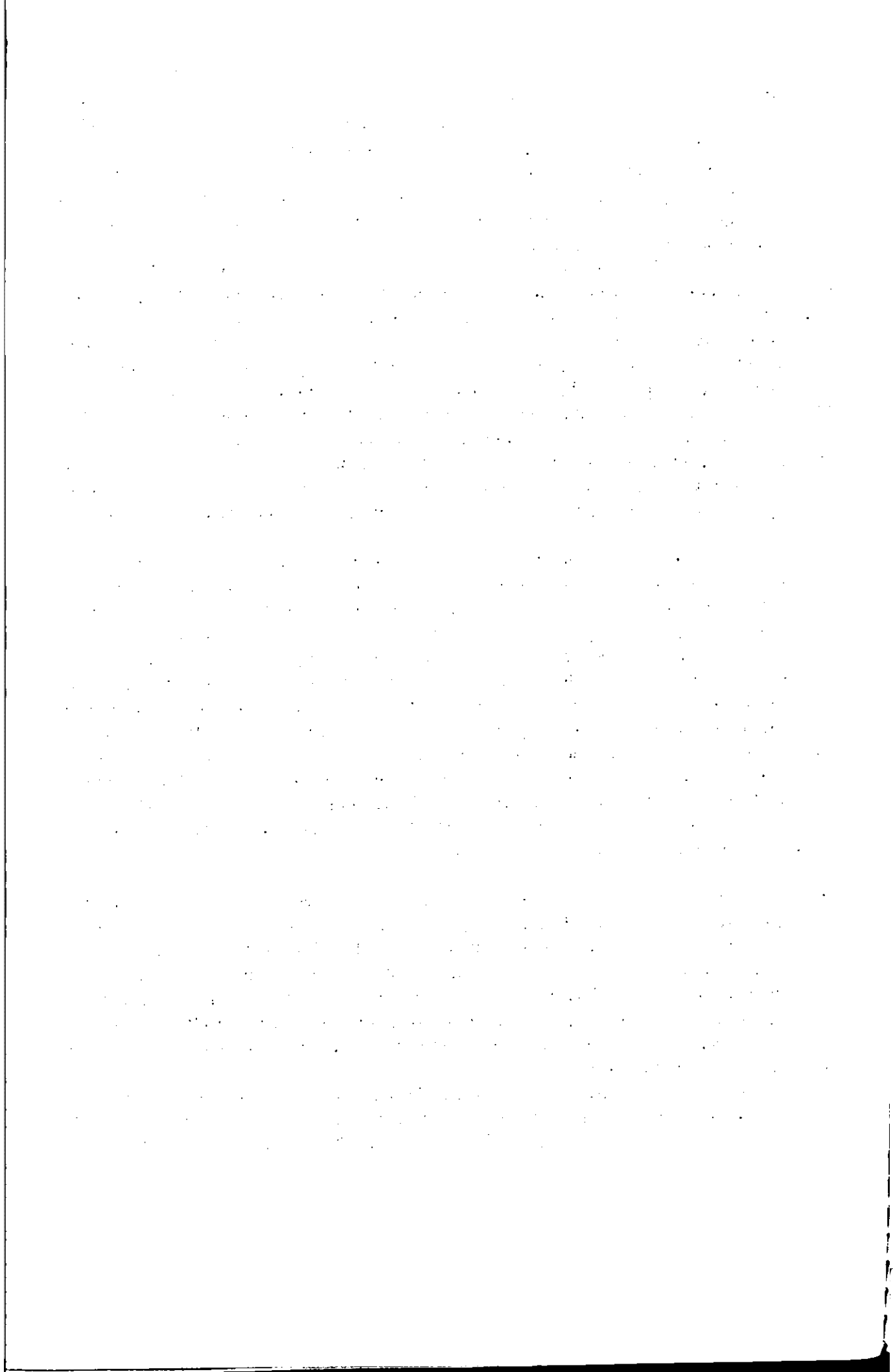
provisions on services overtly favoured the EU's commercial interests. This outcome is mainly the consequence of Opinion 1/94, which reflected the political view of the members as to restrain negotiations on services sectors at international level. According to Opinion 1/94, and unlike the commercial policies of all members of the WTO, the Common Commercial Policy provided for in Art. 113 does not cover trade in services, unless the sector in question had been harmonised. Hence, the member states remain exclusive competences as regards these sectors.

Regarding Chile, it has been said that the envisaged association is yet devoid of commercial objectives. Nevertheless, when negotiations as to accomplish this goal start, the same controversial issues above-mentioned will be presumably found. This holds true for the sensitive products, second-rank-defence of non-tariff barriers, and for the market access in the services sector. Especial concern should be assigned to agricultural products, although Chilean exports to the EU account only for a historical 12% of the total and, in terms of volume, they are rather low, being hardly capable of jeopardising the CAP rules. As for the services sectors, Chile could have a comparative advantage in some specific fields and in comparison to some member states. Actually, services sectors in Chile are regulated in a way that, for better or worse, some EU's member states could hardly match, largely telecommunications, private pension funds, foreign investment rules, labour market, etc.

Last but not least, development cooperation continues standing as a high priority for the parties in the AAs. The EU institutions have gained an in-depth expertise in designing programmes on this area. They seem to know clearly how to meet the cooperation demands and how to drive them properly. This expertise is largely due to the experiences the EU institutions and the member states have acquired during 50 years of inter-action among them. It is worth mentioning that the inclusion of development cooperation within the texts of AAs demonstrates once again the EU's historical liberal stance and consciousness concerning social and economic progress of the less-advanced members of the international community. In other words, the EU seems to hold the remarkable idea that there are some social fields where progress is not attainable only by means of trade, but they require a cooperative approach. Chile should bear in mind these considerations to completely avail from the EU expertise and political will to carry out cooperation development programmes in key sectors of its social and economic structure.

5. As for the context of the association policy in the LA region, it may be asserted that, one could draw a clear line distinguishing between what could be termed a traditional policy, on one hand, and an association policy, on the other. The former was displayed on a universal principle embracing all the LA countries and was largely based on development cooperation programmes. This development cooperation was either bilaterally agreed or unilaterally granted. Three generations of cooperation agreements concluded with LA countries represent the contractual trend to accord such cooperation through instruments especially designed to this aim.

The traditional policy broke up when the Commission Communication, entitled "The European Union and Latin America, the Present Situation and Prospects for a Closer Partnership" (COM (95) 495 final, 23/07/95), called for the Union *to vary* its approach to



the LA region by tailoring its policy to national and regional circumstances. This sentence went away from the traditional heterogeneity the LA region was dealt with. The association policy was born when successive European Councils -Essen and Cannes- expressly favoured the establishment of privileged links with Chile, Mercosur and Mexico. Thereafter, the universal principle was no longer valid to interpret properly and wholly the trend between the two continents. In the short-term, the universal principle should be partly replaced by a principle that claims for specificity in the commercial fields. Thus, development cooperation should continue playing an outstanding role, and under the same universal perspective; however, what is to mark the future agenda is largely and most notably the way in which commercial objectives could be achieved.

At the time the EU policy-makers stood up in front the LA region to define what countries would be finally benefited with the association policy, they concluded *a priori* only Mercosur and Mexico were eligible for these purposes. Therefore, the fact Chile had successfully managed to be reckoned as an eligible country for the association policy should be assessed as a remarkable success of the Chilean Diplomacy. It should also be admitted that this success accounted with the endorsement of the German and Spanish Government, at the time they assumed the Presidency of the Council of the EU.

The analysis also indicates that Mercosur and Mexico are the most powerful economies of the LA region. Their market sizes, as well as their economic and financial potentialities are admitted to be biggest in the region. From many economic indicators Chilean economy can not be compared to those of Mercosur and Chile. However, there also were other economic indicators that firmly endorsed the Chilean arguments to be considered among those to negotiate in the long-term an association with the EU.

As for political variables, it is tempting to underscore that Chile had then proved to fulfil those requirements that claim for a democratic regimen, the respect of Human Rights, and the existence of a rule of law. These requirements were not as explicit as in the case of the CEECs, but constituted a political variable that was permanently present regarding LA countries, because of the foreseen inclusion of the democratic clause in the agreements.

6. It has been asserted that the association policy towards the LA region remains envisaged. This because in the wording of the FCA has been expressly stated that its final aim is the achievement of a Political and Economic Association. Besides, no commercial objectives were agreed. As an association has not yet been negotiated, recourse to Art. 238 had no sense as the legal basis for the FCA. Instead of this, FCAs were based on Art. 113 and 130U-130Y EC Treaty.

Concerning Art. 113, however, the FCA has neither trade concessions nor entail dismantling of tariffs nor other aspect which clearly call for the application of this article. Consequently, the FCA is basically a cooperation development agreement. In ruling case 268/94 (Cooperation Agreement with India), the ECJ dealt with a similar category of agreements, but it avoided to solve the question as to whether or not Art. 113 was the correct legal basis for that agreement, and if positive, which were the matters that justify such inclusion. The ECJ limited only to state that this controversy was purely formal (pa.79)

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Nevertheless, the high value of case 268/94 is given by the fact the ECJ ruled that Art. 130U and 130Y confer upon the EC enough powers for it to perform in the international arena regarding development cooperation matters, without recourse to Art. 235, as pretended by some member states.

Turning to the tridimensional content of an AA, it is tempting to assert that, as the EC law stands so far, the Community may validly conclude agreements with a commercial content, based on Art. 113. The same holds truth for a development cooperation-related agreement, based on Art. 130U-130Y. This evolution buttresses the idea that the trend is for the EC law to reinforce the Community powers in the area of its external relations, by providing it with competences that stress its role as the external face the EU model. This has implied to have conferred upon the Community a wide range of prerogatives that allow it to avoid recourse to internal rules provided for a more substantive participation of the member states. This has been a non-zero-sum game, whose output has largely favoured the EC powers.

In the short-term one might presumably expect that when the second pillar is negotiated, as to change its inter-governmental structure into a supranational management, the Community might be empowered to deal with the tridimensional content of an AA, separately or at the same time under the same agreement. The latter scenario would give rise to an association (Art. 113 + 130U + provision conferring upon the Community powers to agree a political dialogue) without association (Art. 238). Services sectors, as they stand today, would remain in the hands of the member states and would be the sole cause for mixity.

7. Finally, it is tempting to say that the association concept referred to by the original EC Treaty (1957) was a concept basically linked to the establishment of special ties between the EU and the member states' former colonies (Part IV). Art. 238 is a recipient of those privileged links the EU may confer upon third countries not included in Part IV EC Treaty when establishing commercial relations.

Surprisingly, more than thirty years later the EC Treaty came into force, Art. 238 has gained amazing popularity among third countries. Countries from LA area seems to be eager to engage in the EU's association policy basically supported by Art. 238; perhaps this is because they believe it is the last resort to see the Martino Report's proposal (1964) materialised.

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10. ANNEXES

FREE TRADE AGREEMENTS CONCLUDED BY CHILE WITH REGIONAL COUNTRIES

COUNTRY	DATE
BOLIVIA	July 1993
CANADA	July 1995
COLOMBIA	January 1994
CUBA	August 1998
MEXICO	October 1997
MERCOSUR	October 1996
ECUADOR	January 1995
PERU	July 1998
VENEZUELA	July 1993

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COOPERATION AGREEMENTS BETWEEN THE EC AND LATIN AMERICA COUNTRIES

FIRST GENERATION	CONCLUSION
ARGENTINE	08.11.1971
URUGUAY	06.11.1973
BRAZIL	19.12.1973

SECOND GENERATION	CONCLUSION
MEXICO	15.07.1975
BRAZIL	18.09.1982
ANDEAN PACT	17.12.1983
CENTRAL AMERICA	12.11.1985

THIRD GENERATION	CONCLUSION
ARGENTINE	15.17.1995
CHILE	18.09.1992
URUGUAY	17.12.1993
MEXICO	12.11.1995
PARAGUAY	03.02.1992
BRAZIL	29.06.1992
CENTRAL AMERICA	22.03.1993
ANDEAN PACT	25.04.1993

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's annual message to Congress, which is a key part of the executive branch's communication with the legislative branch.

2. The second part of the document is a letter from the Secretary of the Treasury to the Congress, dated January 3, 1862. It is a very important document, as it contains the Secretary's report on the state of the Treasury, which is a key part of the executive branch's communication with the legislative branch.

3. The third part of the document is a letter from the Secretary of the Interior to the Congress, dated January 3, 1862. It is a very important document, as it contains the Secretary's report on the state of the Interior, which is a key part of the executive branch's communication with the legislative branch.

4. The fourth part of the document is a letter from the Secretary of the Navy to the Congress, dated January 3, 1862. It is a very important document, as it contains the Secretary's report on the state of the Navy, which is a key part of the executive branch's communication with the legislative branch.

**FRAMEWORK COOPERATION AGREEMENTS
FOR THE EVENTUAL ESTABLISHMENT OF
A POLITICAL AND ECONOMIC ASSOCIATION**

COUNTRY	CONCLUSION
MERCOSUR	15.12.1995
CHILE	21.06.1996
MEXICO	08.12.1997

1. The first part of the document is a list of the names of the persons who were present at the meeting. The names are listed in alphabetical order.

2. The second part of the document is a list of the topics that were discussed at the meeting. The topics are listed in alphabetical order.

3. The third part of the document is a list of the actions that were taken at the meeting. The actions are listed in alphabetical order.

